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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 90-202]

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine (PPQ) by adding an additional commuted traveltime allowance for Boston, Massachusetts. Commuted traveltime allowances are the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by PPQ employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime for this location.

EFFECTIVE DATE: December 4, 1990.

FOR FURTHER INFORMATION CONTACT: Paul R. Eggert, Director, Resource Management Support, PPQ, APHIS, USDA, Room 623, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7764.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, chapter III, and 9 CFR, chapter I, subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals and animal byproducts, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of PPQ on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by adding an additional commuted traveltime allowance for Boston, Massachusetts. The amendment is set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

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.

The number of requests for overtime services of a PPQ employee at the location affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

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.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the Federal Register.

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 part 3015, subpart V.)

Paperwork Reduction Act

The information collection provisions that are included in this document have been approved by the Office of Management and Budget under control number 0579-0055. An addendum will be submitted in accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

List of Subjects in 7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants, (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR part 354 is amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.2 is amended by adding in the table, in alphabetical order, the information as shown below:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from	Metropolitan area	
		Within	Outside
Add:			
Massachusetts:			
* * *	* * *	* * *	* * *
Boston	New Bedford		5
* * *	* * *	* * *	* * *

Done in Washington, DC, this 29th day of November 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-28370 Filed 12-3-90; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 997

[Docket No. FV-90-146FR]

Inspection, Disposition and Minimum Quality Requirements Applicable to Domestically Produced Peanuts Not Subject to the Peanut Marketing Agreement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes a new part 997 which requires all domestically produced peanuts handled by persons who have not entered into the Peanut Marketing Agreement (Agreement) (7 CFR part 998) to be inspected to the same extent and same manner as is required under the Agreement. This action also requires said peanuts, when destined for human consumption outlets, to meet the same minimum requirements as those specified under the Agreement. Peanut handlers not subject to the Agreement must also comply with reporting and disposition requirements similar to those in effect under the Agreement for peanuts failing to meet minimum edible quality requirements. These requirements for peanuts not handled under the Agreement are established pursuant to section 8b of the Agricultural Marketing Agreement Act of 1937 This action is intended to insure that all peanuts are inspected for size, quality and condition in addition to being chemically tested for aflatoxin to ensure that only wholesome peanuts of good quality enter edible market channels.

EFFECTIVE DATE: December 4, 1990.

FOR FURTHER INFORMATION CONTACT: Patrick A. Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone: 202-475-3862.

SUPPLEMENTARY INFORMATION: This final rule is issued pursuant to requirements of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and as further amended December 12, 1989, Pub. L. 101-220, 4, 103 Stat. 1878, hereinafter referred to as the "Act".

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule under criteria contained therein.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 40 handlers of peanuts who have not signed the Agreement and, thus, will be subject to the regulations contained herein. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $3,500,000. It is estimated that these 40 handlers may be handling up to five percent of the total U.S. crop. U.S. peanut production in 1989 totalled 3,990 million pounds. Five percent of this production would amount to about 200 million pounds of farmers' stock peanuts. The 200 million pounds of farmers' stock peanuts would yield about 150 million pounds of kernels. If this quantity was distributed among the 40 handlers, the average quantity per handler would be about 3.75 million pounds. Based on 1989 market information, the average price of shelled peanuts is about 54 cents per pound. This would bring the average value of peanuts handled annually by each of the 40 handlers to approximately $2.025 million. Thus, most of these handlers would be small entities. There are approximately 46,950 peanut producers in the United States. Most producers doing business with these handlers would also be small entities. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than $500,000.

There are three major peanut production areas in the United States: (1) Virginia-Carolina, (2) Southeast, and (3) Southwest. These areas encompass 16 states. The Virginia-Carolina area (primarily Virginia and North Carolina) usually produces about 18 percent of the total U.S. crop. The Southeast area (primarily Georgia, Florida and Alabama) usually produces about two-thirds of the crop. The Southwest area (primarily Texas, Oklahoma, and New Mexico) produces about 15 percent of the crop.

Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products. The Agreement plays a very important role in the industry's quality control efforts. It has been in place since 1965. Approximately 95 percent of 1988 crop peanuts were marketed by handlers signatory to the Agreement.

Requirements established pursuant to the Agreement require farmers' stock peanuts with visible *Aspergillus Flavus* mold (the principal producer of aflatoxin) to be diverted to non-edible uses. Each lot of shelled peanuts for edible use must be officially sampled and chemically tested for aflatoxin by the Department or in laboratories approved by the Peanut Administrative Committee (Committee) established under the Agreement. The Committee works with the Department in administering the marketing agreement program. The inspection and chemical analysis programs are administered by the Department.

Public Law 101-220, enacted December 12, 1989, amended section 8b of the Act to require all peanuts handled by persons who have not entered into the Agreement (non-signers) to be subject to quality and inspection requirements to the same extent and manner as is required under the Agreement. Under the amendment, no peanuts may be sold or otherwise disposed of for human consumption if the peanuts fail to meet the quality requirements of the Agreement. Violation of the requirements promulgated pursuant to Public Law 101-220 may result in a penalty in the form of an assessment by the Secretary

equal to 140 percent of the support price for quota peanuts, as determined under section 108b of the Agricultural Act of 1949 (7 U.S.C. 1445C–2), for the marketing year for the crop with respect to which such violation occurs.

The intent of Public Law 101–220 and the objective of the Agreement is to insure that only wholesome peanuts of good quality enter edible market channels. Peanuts are produced in many localities under varying weather conditions and using different cultural practices. This means various qualities of peanuts are delivered by producers, milled by handlers, and offered for human consumption. Some peanuts contain defects, including *Aspergillus Flavus* mold, or other damage which causes them to be of low value, poor taste, or unwholesome. Lots of peanuts with significant amounts of such damage adversely affect demand for peanuts, and their sale is not in the public interest. Further, it is felt that even an isolated quality problem could be detrimental to the entire industry.

Notice of proposed minimum quality regulations, inspection, certification, identification, and disposition requirements, and reporting and recordkeeping requirements deemed necessary to achieve the desired goals of Public Law 101–220 was published in the **Federal Register** on September 10, 1990 (55 FR 37238). Interested persons were invited to submit written comments through October 10, 1990. Thirteen comments were received. One comment in support of the proposed rule was submitted by a manufacturer of peanut products. Ten comments in support of the proposed rule were submitted by peanut handlers who operate under the Agreement and by organizations representing peanut growers and handlers. One comment from a handler who will be subject to regulations implemented by this action requested adjustments in the regulations to ease the burden of the cost of inspection. Another commenter complained of not receiving adequate notice of the proposed requirements and of the cost of acquiring inspection facilities.

Two of the ten supporters of the proposal pointed out that all farmers' stock peanuts including those peanuts delivered by producers directly to retail outlets should be covered by an official inspection certificate to assure that satisfactory quality peanuts are used for human consumption, but questioned whether the proposed regulations would require all non-signers to have all of their farmers' stock peanuts inspected and certified. Another supporter expressed a similar concern.

The intent of the regulations is to regulate the handling of all farmers' stock peanuts intended for use in human consumption outlets whether the peanuts are handled by a producer, sheller or manufacturer. *Handle*, as defined in § 997.14, means to engage in the receiving or acquiring, cleaning and shelling, cleaning inshell, or crushing of peanuts and in the shipment (except as a common or contract carrier of peanuts owned by another) or sale of cleaned inshell or shelled peanuts or other activity causing peanuts to enter the current of commerce: *Provided*, That this term does not include sales or deliveries of peanuts by a producer to a handler or to an intermediary person engaged in delivering peanuts to handler(s) and *Provided further*, That this term does not include sales or deliveries of peanuts by such intermediary person(s) to a handler. Any person handling peanuts, as determined by the definition above, would be required to comply with all applicable requirements of the incoming and outgoing quality regulations. In most cases, the person purchasing the peanuts from the producer and preparing them for market would be the handler responsible for meeting all the applicable requirements. However, if a producer performs the handling functions, the producer would become the handler and be responsible for obtaining the necessary quality inspection. Likewise, if a manufacturer or processor of peanut products purchases farmers' stock peanuts from a producer, the manufacturer or processor becomes the handler and would be responsible for having the peanuts inspected and certified before they were processed. In all three instances, the handler would be required to arrange for inspection and obtain a valid inspection certificate indicating that the peanuts met the applicable requirements before such peanuts could be disposed of in human consumption outlets.

In response to these comments and to clarify the intent of the proposed regulations, a new paragraph (paragraph (i)) is added to § 997.20 Incoming Regulation to specifically require producers who handle their own production and deliver peanuts directly to retail outlets to obtain incoming inspection on such peanuts and comply with the requirements of that section.

One comment was received from a handler located in New Mexico who will be subject to regulations implemented by this action. This commenter requested that adjustments in the regulations be made to ease the burden of the cost of inspection. The handler stated that because of the small volume it handles, especially of shelled peanuts, and because of the distance to the inspection office, its cost per pound for inspection would be too high. Thus, the regulations, as proposed, would cause financial hardships. The handler also cited the low incidence of aflatoxin in New Mexico's farmers' stock peanuts. Based upon these claims, the handler requested that the Department consider random inspections as a possible alternative to mandatory inspection of all peanuts to be disposed of for human consumption. As stated in the proposed rule, the Department realizes the regulations implemented by this action may impose additional costs on a number of handlers. There is no evidence to conclude that the additional costs would have a greater impact on the commenter than they would on other handlers subject to the regulations who are in similar situations. Further, the Act requires inspection of all peanuts to be disposed of for human consumption. No provision is made for random or periodic inspection or exemptions of any kind. Therefore, this comment must be denied.

Another commenter, also a handler who will be subject to the regulations herein, stated that he did not receive adequate notice of the proposed requirements on non-signers. Public Law 101–220 mandating the regulation of peanuts handled outside of the Agreement was enacted on December 12, 1989. On April 12, 1990, the Department issued a national press release announcing the enactment of the law and its intention to issue implementing regulations. Also, a regional press release was issued on September 21, 1990, announcing the September 10, 1990, **Federal Register** publication of the proposed requirements and the opportunity for interested persons to file written comments through October 10. Hence, an effort was made by the Department to inform interested persons of the proposed requirements mandated by Public Law 101–220. This commenter also stated that he could not afford the addition of inspection facilities which would cost a minimum of $30,000. Generally, the Federal or Federal-State Inspection Service (Inspection Service) provides on-site inspection using equipment provided by individual peanut handlers. In the case of outgoing inspection of shelled or cleaned inshell peanuts where handlers do not have the necessary equipment, the Inspection Service will sample the product and perform the inspection at its offices

where the necessary equipment is available. In the case of incoming inspection of farmers' stock peanuts, handlers who do not have access to sampling and inspection equipment may make arrangements to have inspections performed at buying facilities operated and/or utilized by other handlers. Because the handler could make such arrangements by paying a reasonable fee, this comment is denied.

The requirements of 7 CFR part 997, as hereinafter set forth are the same as those in effect under the Agreement. Whenever the regulations specified in the Agreement are changed, the regulations hereinafter added as 7 CFR part 997 will be revised, as appropriate, to reflect such changes.

This action establishes both incoming and outgoing quality regulations. The incoming regulations specify the quality of farmers' stock peanuts, intended for human consumption, which handlers may purchase from producers. Handlers are required to purchase only good quality, wholesome peanuts for use in edible products. Peanuts with visible *Aspergillus Flavus* mold are required to be diverted to nonedible uses. The incoming regulations, specifying the quality of peanuts for milling or cleaning into shelled peanuts or cleaned inshell peanuts for human consumption, are necessary to lessen the chances of defective peanuts being commingled with deliveries of sound peanuts. It is difficult and expensive to separate defective peanuts from sound peanuts once they have been commingled. The incoming regulations contain handling procedures and reporting requirements for non-edible peanuts intended for use as seed peanuts or oilstock. These procedures and requirements are designed to prevent such peanuts from being used for human consumption. Hence, the incoming regulations act as a quality control safeguard and could serve as a cost saving mechanism. The outgoing quality regulations require peanuts to meet certain quality specifications and to be inspected before being disposed of in edible outlets to maintain the quality of peanuts for human consumption. Each lot of shelled peanuts to be used for edible purposes must be sampled and the samples chemically analyzed for aflatoxin. If the chemical assay shows the lot to be positive as to aflatoxin, the lot will not be allowed to be marketed for edible use. Such lots which are reconditioned (the removal of contaminated kernels) and subsequently retested and found negative as to aflatoxin could be disposed of in edible outlets.

In § 997.30(a) of the proposed regulations, "Negative" aflatoxin content was defined as "having an aflatoxin content of 15 parts per billion (ppb) or less". This definition failed to account for the fact that non-edible quality peanuts to be disposed of for animal feed or other non-human consumption uses may contain as much as 25 ppb. Therefore, changes in the definition of "Negative" are made to include the level for peanuts for human consumption (15 ppb) and for peanuts for non-human consumption (25 ppb). These are the maximum levels at which peanuts handled under the Agreement are certified "negative" with respect to aflatoxin.

The sampling, inspecting, identifying, testing and certifying of lots of peanuts will be performed in accordance with §§ 997.30 and 997.50 as are added hereinafter. Under the regulations, the sampling, inspection, positive lot identification, and certification of peanuts will be performed by the Federal or Federal-State Inspection Service. The chemical analysis will be performed in the same manner and by the same laboratories as prescribed under the Agreement. A list of approved laboratories including addresses and telephone numbers is provided in paragraph (c) of § 997.30. To obtain information on making arrangements for the required inspection and certification, handlers should contact Chief, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, P.O. Box 96456, Rm. 2056–S, Washington, DC 20250; Telephone (202) 447–5870.

Section 997.40 of the proposed regulations includes provisions to regulate the movement of peanuts for reconditioning and the disposition of peanuts failing to meet quality requirements. The provisions controlling the disposition of peanuts failing to meet the requirements for human consumption are intended to assure that only sound, wholesome peanuts end up in human consumption outlets.

Section 997.40 provides that peanuts failing to meet quality requirements may be moved to or sold to other handlers for reconditioning and/or disposition. Also, certain paragraphs of §§ 997.20 and 997.30 provide for the movement of peanuts between handlers. Because the definition of "Handler" included in § 997.15 of the regulations excludes handlers who are signatory to the Agreement, the regulations would have unnecessarily restricted the movement of peanuts between handlers and signatory handlers. Handlers should be allowed to dispose of peanuts to other handlers who are signatory to the Agreement or use the services of such handlers to recondition peanuts which fail to meet quality requirements. Further, the regulations are intended to ensure that all peanuts meet minimum quality requirements before being disposed of for human consumption, not to restrict the movement of peanuts between handlers. Therefore, the provisions of §§ 997.20, 997.30, and 997.40 are changed to allow acquisition from and movement and disposition to signatory handlers.

There are two categories of inedible peanuts—unrestricted and restricted. Unrestricted peanuts are peanuts which are not edible grade but do not contain aflatoxin. Under the regulations contained herein, like the Agreement, such peanuts could be disposed of for domestic crushing, wildlife feed, bait for rodents, and livestock feed. These have traditionally been the only economically viable outlets for such peanuts. Most unrestricted meal (the byproduct from crushing) is used for livestock feed. Restricted peanuts are peanuts which contain aflatoxin. Such peanuts will only be allowed to be disposed of for restricted domestic crushing. The resulting meal could only be used for fertilizer, unless it were satisfactorily detoxified. When satisfactorily detoxified, the meal could be used for feed. To prevent use of restricted meal for feed, handlers are required to denature it or restrict its sale to licensed or U.S. registered fertilizer manufacturers or firms engaged in exporting which will export such meal for non-feed use or sell it to fertilizer manufacturers.

Unrestricted and restricted peanuts may be exported as inedibles to countries other than Canada and Mexico. Exports of such peanuts are required to be chopped into peanut fragments to assure that they are not used for human consumption. Fragmented raw peanuts cannot be roasted properly for human consumption. They are only satisfactory for crushing.

Export of inedible quality peanuts to Canada and Mexico is not authorized because Canada and Mexico are not viable markets for oil stock peanuts. Therefore, there is a potential that such peanuts could be diverted to human consumption channels. All movement and disposition of unrestricted and restricted peanuts is required to be reported as hereinafter discussed.

Reporting and recordkeeping requirements necessary to ensure and check compliance with quality regulations are also implemented.

Reports regarding acquisition, movement for further processing and disposition of peanuts and other necessary reports are required. It is estimated that each handler will take 27 hours annually to complete the reports. Recordkeeping requirements are also included to require handlers to retain information for at least two years beyond the crop year of applicability. Such reporting and recordkeeping requirements have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) and have been assigned OMB No. 0581-0163.

For the purposes of checking and verifying reports filed by handlers or the operation of handlers under the regulations hereinafter implemented, provisions are included which allow the Secretary, through duly authorized agents, to have access to any premises where peanuts may be held. Authorized agents, at any time during regular business hours, are permitted to inspect any peanuts held and any and all records with respect to the acquisition, holding or disposition of any peanuts which may be held or which may have been disposed of by that handler.

In addition to the correction of minor typographical errors appearing in the proposal, a modification is made in § 997.53 to add the words "movement" and "processing" to the first sentence of that section. This modification is made to ensure that this section covers all relevant records maintained by handlers, including those relating to the movement and processing of peanuts.

It is the Department's view that this action will help the entire peanut industry provide only good quality, wholesome peanuts for edible use. This is important in maintaining and expanding markets for peanuts and peanut products. It is difficult to estimate the extent of any additional costs since many of the handlers who are not covered by the Agreement are already having their peanuts inspected and tested so that they meet the quality standards required by their buyers. However, the importance of providing safe products to consumers and other benefits expected from the restriction of low quality peanuts from edible markets outweighs any additional costs resulting from these requirements.

Based on available information, the Administrator of the AMS has determined that this final rule may impose some costs on affected handlers, but that the final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information including the comments received, and based upon the Department's interpretation of the Act as amended by Public Law 101-220, it is found that the regulations set forth in this final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. The regulations contained herein should apply to as much of the 1990 peanut crop as possible. By its legislation, Congress notified all handlers over eleven months ago that these provisions would be in effect for the 1990 crop. Therefore, the industry has had adequate time to prepare for these requirements.

List of Subjects in 7 CFR Part 997

Peanuts, Quality regulations, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 997 is added as follows:

Note: This part will appear in the annual Code of Federal Regulations.

PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

Definitions

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Quality Regulations

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Reports, Books and Records

997.52 Reports of acquisitions and shipments.
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997.54 Agents.

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674; Sec. 4, 103 Stat. 1878, 7 U.S.C. 608b.

Definitions

§ 997.1 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture who is, or who may hereafter be authorized to act in his stead.

§ 997.2 Fruit and Vegetable Division.

Fruit and Vegetable Division is synonymous with Division and means the Fruit and Vegetable Division of the Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456.

§ 997.3 Act.

Act means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 997.4 Person.

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

§ 997.5 Peanuts.

Peanuts means the seeds of the legume *arachis hypogaea* and includes both inshell and shelled peanuts, other than those marketed by the producer in green form for consumption as boiled peanuts.

(a) *Farmers stock. Farmers stock peanuts* means picked and threshed peanuts which have not been shelled, crushed, cleaned or otherwise changed (except for removal of foreign material, loose shelled kernels and excess moisture) from the form in which customarily marketed by producers.

(b) *Segregation 1.* "Segregation 1 peanuts" means farmers' stock peanuts with not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus.*

(c) *Segregation 2.* "Segregation 2 peanuts" means farmers' stock peanuts with more than 2 percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus.*

(d) *Segregation 3.* "Segregation 3 peanuts" means farmers' stock peanuts with visible *Aspergillus flavus.*

§ 997.6 Loose shelled kernels.

Loose shelled kernels means peanut kernels or portions of kernels completely free of their hulls and found in deliveries of farmers' stock peanuts.

§ 997.7 Fall through.

Fall through means sound split and broken kernels and whole kernels which pass through specified screens.

§ 997.8 Pickouts.

Pickouts means those peanuts removed during the final milling process at the picking table, by electronic equipment, or otherwise during the milling process.

§ 997.9 Fragmented.

For the purpose of this part, *fragmented* means that not more than 30 percent of the peanuts shall be whole kernels that ride the following screens, by type: Spanish $^{15}/_{64} \times {}^{3}/_{4}$ inch slot; Runner $^{16}/_{64} \times {}^{3}/_{4}$ inch slot; and Virginia $^{15}/_{64} \times 1$ inch slot.)

§ 997.11 Producer.

Producer means any person engaged within the area in a proprietary capacity in the production of peanuts for sale.

§ 997.12 Production areas.

Production areas mean all States with commerical production of peanuts including:

(a) The Southeastern Area consisting of the States of Alabama, Florida, Georgia, Mississippi, and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers.

(b) The Southwestern Area consisting of the States of Arizona, Arkansas, California, Louisiana, New Mexico, Oklahoma, and Texas.

(c) The Virginia-Carolina Area consisting of the States of Missouri, North Carolina, Tennessee, Virginia, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers.

§ 997.13 Area association.

Area association means for the Southeastern area, GFA Peanut Association, Camilla, Georgia; Southwestern area, Southwestern Peanut Growers Association, Gorman, Texas; and Virginia-Carolina area, Peanut Growers Cooperative Marketing Association, Franklin, Virginia.

§ 997.14 Handle.

Handle means to engage in the receiving or acquiring, cleaning and shelling, cleaning inshell, or crushing of peanuts and in the shipment (except as a common or contract carrier of peanuts owned by another) or sale of cleaned inshell or shelled peanuts or other activity causing peanuts to enter the current of commerce: *Provided,* That this term does not include sales or deliveries of peanuts by a producer to a handler or to an intermediary person engaged in delivering peanuts to handler(s): *And Provided further,* That this term does not include sales or deliveries of peanuts by such intermediary person(s) to a handler.

§ 997.15 Handler.

Handler means any person who handles peanuts, in a capacity other than that of a custom cleaner or dryer, an assembler, a warehouseman or other intermediary between the producer and the person handling: *Provided,* That this term does not include handlers signatory to the Peanut Marketing Agreement.

§ 997.16 Crop year.

Crop year means the 12-month period beginning with July 1 of any year and ending with June 30 of the following year.

§ 997.17 Inspection service.

Inspection service means the Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, UDSA.

Quality Regulations

§ 997.20 Incoming regulation.

(a) No handler shall receive or acquire peanuts intended for human consumption, either from a producer or other person, unless such peanuts are inspected pursuant to § 997.50 and are determined to be Segregation 1 peanuts at time of receipt from the producer or, if received from another person, had not been mixed with peanuts of a lower quality than Segregation 1 and meet the following additional requirements specified in this section: *Provided,* That a handler may—

(1) Acquire shelled peanuts from the Commodity Credit Corporation (CCC) or cleaned inshell or shelled peanuts from other handlers, a handler as defined in 7 CFR 998.8, or from buyers who have purchased such peanuts from handlers or from the CCC, if the lot has been certified as meeting the requirements of § 997.30(a) and the identity is maintained; and/or

(2) Perform services for an area association pursuant to a peanut receiving and warehouse contract.

(b) *Moisture and foreign material*—(1) *Moisture.* Except as provided under paragraph (e) Seed Peanuts of this section, no handler shall receive or acquire peanuts intended for human consumption containing more than 10.49 percent moisture: *Provided,* That peanuts of a higher moisture content may be received and dried to not more than 10.49 percent moisture prior to storing or milling. For farmers stock peanuts, moisture determinations shall be rounded to the nearest whole number. Moisture determinations on shelled peanuts shall be carried to the hundredths place.

(2) *Foreign material.* No handler shall receive or acquire farmers' stock peanuts intended for human consumption containing more than 10.49 percent foreign material, except that peanuts having a higher foreign material content may be received or acquired if they are held separately until milled, or moved over a sand-screen before storage, or shipped directly to a plant for prompt shelling. The term "sand-screen" means any type of farmers' stock cleaner which, when in use, removes sand and dirt.

(c) *Damage.* For the purpose of determining damage, other than concealed damage, on farmers' stock peanuts, all percentage determinations shall be rounded to the nearest whole number.

(d) *Loose shelled kernels.* No handler shall receive or acquire for human consumption farmers' stock peanuts containing more than 14.49 percent loose shelled kernels, except that peanuts having a higher loose shelled kernel content may be received or acquired if they are held separately until milled or shipped directly to a plant for prompt shelling. All percentage determinations shall be rounded to the nearest whole number. Handlers may separate from the loose shelled kernals received with farmers stock peanuts, those sizes of kernels which ride screens with the following or larger slot openings: Runner—$^{16}/_{64} \times {}^{3}/_{4}$ inch; Spanish and Valencia—$^{15}/_{64} \times {}^{3}/_{4}$ inch; Virginia—$^{15}/_{64} \times 1$ inch. If so separated, those loose shelled kernels which ride the screens may be included with shelled peanuts prepared by the handler for inspection and sale for human consumption: *Provided,* That no more than 5 percent of such loose shelled kernels are kernels which would fall through screens with such minimum prescribed openings. Those loose shelled kernels which do not ride the screens shall be removed from the farmers' stock peanuts and shall be held separate and apart from other peanuts and disposed of for inedible use as provided in § 997.40. If the kernels which ride the prescribed screen are not separated from the kernels which do not ride the prescribed screen, the entire amount of loose shelled kernels shall be removed from farmers' stock peanuts

and shall be so held and so delivered or disposed of.

(e) *Seed peanuts.* Peanuts which are not Segregation 1 peanuts and therefore cannot be acquired for human consumption may be acquired, shelled and delivered for seed purposes. Peanuts intended for seed use which do not meet Segregation 1 requirements shall be stored and shelled separate from peanuts intended for human consumption. A handler whose operations include custom seed shelling may receive, custom shell, and deliver for seed purpose farmer's stock peanuts, and such peanuts shall be exempt from the requirements of this section and, therefore, shall not be required to be inspected and certified as meeting these requirements, and the handler shall report to the Division the weight of each lot of farmers' stock peanuts received on such basis on Form FV-117 "Weekly Report of Uninspected Farmers Stock Seed Peanuts Received for Custom Seed Shelling". However, handlers who acquire seed peanut residuals from their custom shelling of uninspected (farmers' stock) seed peanuts or from another person shall hold and/or mill such residuals separate and apart from other receipts or acquisitions of the handler, and such residuals which meet the requirements specified in § 997.30(a) may be disposed of by sale to human consumption outlets, and any portion not meeting such requirements shall be disposed of by sale as peanuts failing to meet human consumption requirements pursuant to § 997.40.

(f) *Oilstock.* Handlers may acquire for disposition to domestic crushing or export to countries other than Canada and Mexico farmers' stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption. Handlers may act as accumulators and acquire, for other handlers; a handler as defined in 7 CFR 998.8 or from other persons, Segregation 2 or 3 farmers' stock peanuts. Handlers may also acquire shelled or fragmented peanuts originating from Segregation 2 or 3 farmers' stock or the entire mill production of shelled or fragmented peanuts from Segregation 1 farmers' stock or lots of shelled peanuts originating from Segregation 1 peanuts and which have been positive lot identified as specified in § 997.30(d), which failed to meet the requirements for human consumption pursuant to § 997.30(a): *Provided,* That all such acquisitions are held separate from Segregation 1 peanuts acquired for milling or from edible grades of shelled or milled peanuts. Handlers may commingle the Segregation 2 and 3 peanuts or keep them separate and apart and further disposition shall be only as provided in § 997.40(b)(4)(i). Handlers who acquire farmers' stock peanuts of a lower quality than Segregation 1 or cleaned inshell peanuts which fail to meet the requirements for human consumption shall report such acquisitions to the Division as prescribed on Form FV-117-1 "Handlers Monthly Report of Acquisition of Segregation 3 and/or Segregation 2 Commingled Peanuts". Handlers who acquire grades or sizes of shelled peanuts which fail to meet the requirements for human consumption for disposition to domestic crushing or for fragmenting and subsequent export to countries other than Canada or Mexico shall report such acquisitions on Form FV-117-2 "Acquisitions of Non-Edible Grades of Commercial Shelled Peanuts for Crushing, Fragmenting or Dyeing".

(g) *Shelled peanuts.* Handlers may acquire from other handlers or a handler as defined in 7 CFR 998.8, for remilling and subsequent disposition to human consumption outlets, shelled peanuts (which originated from "Segregation 1 peanuts") that fail to meet the requirements specified for human consumption in § 997.30(a). Any lot of such peanuts must be accompanied by a valid inspection certificate for grade factors and must be positive lot identified. Transactions made in this manner shall be reported to the Division on Form FV-117-3. "Report of Disposition to and Acquisition from Another Handler—Shelled Peanuts Failing Edible Quality Requirements for Remilling and Further Handling" by both the handler acquiring the peanuts and the handler selling such peanuts. Peanuts acquired pursuant to this paragraph shall be held and milled separate and apart from other receipts or acquisitions of the receiving handler, and further disposition shall be regulated by § 997.40.

(h) *Inedible quality shelled peanuts for disposition to animal feed.* Handlers may receive or acquire from other handlers or a handler as defined in 7 CFR 998.8, for further milling and/or processing and subsequent disposition for use as domestic animal feed, shelled peanuts that fail to meet the requirements specified for human consumption in § 997.30(a). Any lot of such peanuts received or acquired for such further disposition shall be positive lot identified and covered by a valid grade inspection certificate issued by a Federal or Federal-State Inspector. Transactions made in this manner shall be reported to the Division on Form FV-117-2 "Acquisitions of Non-Edible Grades of Commercial Shelled Peanuts for Crushing, Fragmenting or Dyeing". Peanuts received or acquired pursuant to this paragraph shall be held, milled, and/or processed separate and apart from peanuts destined to human consumption outlets and further disposition shall be regulated as provided in § 997.40(b)(2).

(i) No producer may handle (as defined in § 997.14); process; prepare for sale; or otherwise alter peanuts of his own production from the condition of Farmers Stock, as defined in § 997.5, for disposition in human consumption outlets unless such peanuts are first inspected and certified pursuant to § 997.50 and meet the applicable requirements of this section.

§ 997.30 Outgoing regulation.

(a) *Shelled peanuts*—(1) No handler shall ship, sell, or otherwise dispose of shelled peanuts for human consumption unless such peanuts are Positive Lot Identified and certified as meeting the requirements specified in the table in this paragraph:

MINIMUM GRADE REQUIREMENTS—PEANUTS FOR HUMAN CONSUMPTION

[Whole Kernels and Splits]

Type and grade category	Maximum limitations						
	Excluding lots of "splits"						
	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign material (percent)	Moisture (percent)
			Sound split and broken kernels	Sound whole kernels	Total		
Runner	1.50	2.50	3.00%; 17/64 inch; round screen.	3.00%; 16/64×3/4 inch; slot screen.	4.00%; both screens.	.20	9.00
Virginia (except No. 2)	1.50	2.50	3.00%; 17/64 inch; round screen.	3.00%; 15/64×1 inch; slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia	1.50	2.50	3.00%; 16/64 inch; round screen.	3.00%; 15/64×3/4 inch; slot screen.	4.00%; both screens.	.20	9.00
No. 2 Virginia	1.50	3.00	6.00%; 17/64 inch; round screen.	6.00%; 15/64×1 inch; slot screen.	6.00%; both screens.	.20	9.00
	Lots of "splits"						
Runner (not more than 4% sound whole kernels).	1.50	2.50	3.00%; 17/64 inch; round screen.	3.00%; 16/64×3/4 inch; slot screen.	4.00%; both screens.	.20	9.00
Virginia (not more than 90% splits.	1.50	2.50	3.00%; 17/64 inch; round screen.	3.00%; 16/64×1 inch; slot screen.	4.00%; both screens.	.20	9.00
Spanish and Valencia (not more than 4% sound whole kernels.	1.50	2.50	3.00%; 16/64 inch; round screen.	3.00%; 15/64×3/4 inch; slot screen.	4.00%; both screens.	.20	9.00

(2) Peanuts meeting the specifications in the table in paragraph (a)(1) of this section must also be certified "negative" as to aflatoxin content prior to shipment. For the current crop year, "Negative" aflatoxin content means 15 parts per billion (ppb) or less for peanuts which have been certified as meeting edible quality grade requirements and 25 ppb or less for non-edible quality categories. Prior to shipment, appropriate samples for pretesting shall be drawn, in accordance with paragraph (c) of this section, from each lot of edible quality peanuts. The lot size of edible quality shelled peanuts, in bulk or bags, shall not exceed 200,000 pounds.

(b) *Cleaned inshell peanuts.* No handler shall ship, sell, or otherwise dispose of cleaned inshell peanuts for human consumption:

(1) With more than 1.00 percent kernels with mold present unless a sample of such peanuts, drawn by an inspector of the Federal or Federal-State Inspection Service, was analyzed chemically by a U.S. Department of Agriculture laboratory (hereinafter referred to as "USDA laboratory") or a laboratory listed in paragraph (c) of this section and found to be wholesome relative to aflatoxin;

(2) With more than 2.00 percent peanuts with damaged kernels;

(3) With more than 10.00 percent moisture; or

(4) With more than 0.50 percent foreign material.

The lot size of such peanuts in bags or bulk shall not exceed 200,000 pounds.

(c) *Pretesting shelled peanuts*—(1) Each handler shall cause appropriate samples of each lot of edible quality shelled peanuts to be drawn by an inspector of the Federal or Federal-State Inspection Service. The gross amount of peanuts drawn shall be large enough to provide for a grade analysis, for a grading check-sample, and for three 48-pound samples for aflatoxin assay. The three 48-pound samples shall be designated by the Federal or Federal-State Inspection Service as "Sample #1N", "Sample #2N", and "Sample #3N" and each sample shall be placed in a suitable container and "positive lot identified" by means acceptable to the Inspection Service. Sample #1N may be prepared for immediate testing or Sample #1N, Sample #2N, and Sample #3N may be returned to the handler for testing at a later date.

(2) Before shipment of a lot of peanuts to the buyer (receiver), the handler shall cause Sample #1 to be ground by the Federal or Federal-State Inspection Service, a USDA laboratory or a laboratory listed herein, in a "subsampling mill" approved by the Division. The resultant ground subsample from Sample #1N shall be of a size specified by the Division and shall be designated as "Subsample 1–ABN" and at the handler's or buyer's option, a second subsample may also be extracted from Sample #1N. It shall be designated as "Subsample 1–CDN". Subsample 1–CDN may be sent as requested by the handler or buyer, for aflatoxin assay, to a USDA laboratory or other laboratory that can provide analyses results on such samples in 36 hours. The cost of sampling and testing Subsample 1–CDN shall be for the account of the requester. Subsample 1–ABN shall be analyzed only in a USDA laboratory or a laboratory listed herein. Both Subsamples 1–ABN and 1–CDN shall be accompanied by a notice of sampling signed by the inspector containing, at least, identifying information as to the handler (shipper), the buyer (receiver), if known, and the positive lot identification of the shelled peanuts. A copy of the such notice covering each lot shall be sent to the Division.

(3) The samples designated as Sample #2N and Sample #3N shall be held as aflatoxin check-samples by the Inspection Service or the handler and shall not be included in the shipment to the buyer until the analyses results from Sample #1N are known.

(4) Upon call from the laboratory, handler shall cause Sample #2N to be ground by the Inspection Service in a "subsampling mill". The resultant ground subsample from Sample #2N shall be of a size specified by the Division and it shall be designated as "Subsample #2–ABN". Upon call from the laboratory, the handler shall cause Sample #3N to be ground by the

Inspection Service in a "subsampling mill". The resultant ground subsample from Sample #3N shall be of a size specified by the Division and shall be designated as "Subsample #3–ABN". "Subsamples 2–ABN and 3–ABN" shall be analyzed only in a USDA laboratory or a laboratory listed herein and each shall be accompanied by a notice of sampling. A copy of each such notice shall be sent to the Division. The results of each assay shall be reported by the laboratory to the handler and to the Division. All costs involved in the sampling and testing of peanuts required by this regulation shall be for the account of the applicant.

(5) Information on making arrangements for the required inspection and certification, can be obtained by contacting the Chief, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, P.O. Box 96456, Room 2056–S, Washington, DC 20250; Telephone (202) 447–5870.

(i) Laboratories at the following locations are approved to perform the chemical analyses required pursuant to this part. The sampling plan and procedures may be obtained from the Division.

Commodities Scientific Support Division
Agricultural Marketing Service, USDA
1411 Reeves St.
Mail: P.O. Box 1368
Donthan, AL 36301
Tel. (205) 794–5070

Commodities Scientific Support Division
Agricultural Marketing Service, USDA
301 West Pearl St.
Mail: P.O. Box 279
Aulander, NC 27805
Tel. (919) 345–1661

Commodities Scientific Support Division
Agricultural Marketing Service, USDA
2705 Taft St.
Albany, GA 31707
Tel. (912) 430–8490/8491

Commodities Scientific Support Division
Agricultural Marketing Service, USDA
P.O. Box 488
Golden Peanut Company
Ashburn, GA 31714
Tel. (912) 567–3703

Commodities Scientific Support Division
Agricultural Marketing Service, USDA
610 North Main St.
Blakely, GA 31723
Tel. (912) 723–4570

Commodities Scientific Support Division
Agricultural Marketing Service, USDA
548 North Ellis Stret
Mail: P.O. Box 548
Alimento Processing
Camilla, GA 31730
Tel. (912) 336–0785

Commodities Scientific Support Division
Agricultural Marketing Service, USDA
P.O. Box 272
Dawson, GA 31742
Tel. (912) 995–2111

Commodities Scientific Support Division
Agricultural Marketing Service, USDA
Golden Peanut Co.
106 South Cliff St.
Mail: P.O. Box 97
Graceville, FL 32440
Tel. 1–800–451–2348

Commodities Scientific Support Division
Agricultural Marketing Service, USDA
107 South 4th St.
Madill, OK 73446
Tel. (405) 795–5615

Commodities Scientific Support Division
Agricultural Marketing Service, USDA
308 Culloden St.
Mail: P.O. Box 1130
Suffolk, VA 23434
Tel. (804) 925–2286

ABC Research
P.O. Box 1557
Gainesville, FL 32602
Tel. (904) 372–0436

Pert Laboratories
P.O. Box 267
Edenton, NC
Tel. (919) 482–4456

Professional Service Industries, Inc.
3 Burwood Lane
San Antonio, TX 78216
Tel. (512) 349–5242

Texas Department of Agriculture
301 West Navarro St.
DeLeon, TX 76444
Tel. (817) 893–2915

Texas Department of Agriculture
400 Lubbock St.
Gorman, TX
Tel. (817) 734–2721

(ii) Handlers should contact the nearest laboratory from the list in paragraph (c)(5)(i) of this section to arrange to have samples chemically analyzed for aflatoxin, or for further information concerning the chemical analyses required pursuant to this part handlers may contact: Dr. Craig Reed, Director, Commodities Scientific Support Division, Agricultural Marketing Service, USDA, P.O. Box 96456, Room. 3064–S, Washington, DC 20090–6456, Tel. (202) 447–5231.

(d) *Identification.* Each lot of shelled or cleaned inshell peanuts shipped or otherwise disposed of for human consumption shall be identified by positive lot identification procedures. For the purpose of this regulation, "positive lot identification" of a lot of shelled or inshell peanuts is a means of relating the inspection certificates to the lot covered so that there can be no doubt that the peanuts delivered are the same ones described on the inspection certificate. The crop year that is shown on the positive lot identification tags, or other means of positive lot identification, shall accurately describe the crop year in which the peanuts in the lot were produced. Such procedure on bagged peanuts shall consist of attaching a lot numbered tag bearing the official stamp of the Federal or Federal-State Inspection Service to each filled bags in the lot. The tag shall be sewed (machine sewed if shalled peanuts) into the closure of the bag except that in plastic bag the tag shall be inserted prior to sealing so that the official stamp is visible. Any peanuts moved in bulk or bulk bins shall have their lot identity maintained by sealing the conveyance and, if in other containers, by other means acceptable to the Federal or Federal-State Inspection Service. All lots of shelled or cleaned inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures.

(e) *Reinspection.* Whenever the Division has reason to believe that peanuts may have been damaged or deteriorated while in storage, the Division may reject the then effective inspection certificate and may require the owner of the peanuts to have a reinspection to establish whether or not such peanuts may be disposed of for human consumption.

(f) *Inter-plant transfer.* Any handler may transfer peanuts from one plant owned by the handler to another of the handler's plants or to commercial storage, without having such peanuts positive lot identified and certified as meeting quality requirements: *Provided,* That, ownership is retained by the handler; *Provided further,* That, for handlers located within any one of the specific production areas defined in § 997.12 such transfer may be only to points within the same production area. Upon any transferred peanuts being disposed of for human consumption, such peanuts shall meet all the applicable requirements.

(g) *Residuals from seed peanuts.* Handlers who receive and custom shell for seed purposes farmers' stock peanuts (which have not been inspected and certified as meeting the requirements § 997.20), shall hold and mill peanuts acquired as residuals from such operations separate and apart from peanuts acquired as Segregation 1 farmers' stock. Likewise, any such residuals received or acquired from a handler, a handler as defined in 7 CFR 998.8 or non-handler shall be held and milled separate and apart in the same manner. Residuals that meet requirements of § 997.30(a) may be disposed of by sale to human consumption outlets, to another handler or a handler as defined in 7 CFR 998.8 and any portion in positive identified lots not meeting such requirements shall be handled and disposed of pursuant to

the provisions of § 997.40 as hereinafter set forth.

§ 997.40 Reconditioning and disposition of peanuts failing quality requirements.

(a) *Further processing of shelled peanuts failing quality requirements*—(1) Handlers may remill peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements of § 997.30(a) or move positive lot identified shelled peanuts that fail to meet such requirements to a custom remiller or sell such peanuts another handler, or a handler as defined in 7 CFR 998.8, for remilling or further handling. If after remilling, such peanuts meet the requirements of § 997.30(a), they may be disposed of for human consumption. If such peanuts still do not meet the requirements of § 997.30(a) they may be blanched as provided in paragraph (a)(2) of this section or disposed of and such disposition reported as provided in paragrah (b) of this section.

(2) Handlers may blanch or cause to have blanched positive lot identified shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for human consumption specified in § 997.50 and § 997.30(c) and meet the requirements specified in § 997.30(a). Such peanuts which are blanched and are subsequently inspected and tested, or only inspected for grade requirements if such peanuts are covered by a previous "negative" aflatoxin certificate, as provided in § 997.50 and § 997.30(c) and meet the requirements specified in § 997.30(a) may be disposed of for human consumption. If such peanuts still do not meet the requirements of § 997.30(a) they shall be disposed of and such disposition reported as provided in paragraph (b) of this section.

(3) Lots of peanuts moved under the provisions of paragraphs (a)(1) and (a)(2) of this section must be accompanied by a valid grade inspection certificate and must be positive lot identified. The title of such peanuts shall be retained by the handler until the peanuts have been remilled or blanched and certified by the Federal or Federal-State Inspection Service as meeting the requirements for disposition to human consumption outlets specified in § 997.30(a). Movement of peanuts which fail to meet the quality requirements specified in § 997.30 for remilling and/or blanching shall be reported on Form FV-117-4 "Report of Movement to Blancher or Remiller—For Blanching or Custom Remilling"—Peanuts Failing Edible Quality Requirements".

(4) The residual peanuts resulting from remilling shall be bagged and red-tagged and disposed of to domestic crushing by the remiller or returned to the handler for disposition as restricted as provided in paragraph (b)(3) of this section. The residual peanuts, excluding skins and hearts, resulting from blanching, shall be bagged and red tagged and returned to the handler for disposition as provided in paragraph (b)(3) of this section; or in the alternative, if such residuals are positive lot identified by a Federal or Federal-State Inspection Service, they may be disposed of by the blancher to domestic crushing or exported to countries other than Canada or Mexico, provided they meet fragmented requirements and are marked "Non-edible quality".

(b) *Disposition of shelled peanuts failing quality requirements for human consumption*—(1) Handlers may dispose of positive lot identified shelled peanuts (which originated from Segregation 1 peanuts) which fail to meet the requirements for human consumption specified in § 997.30(a) but were determined "negative" as to aflatoxin pursuant to § 997.30(c) as unrestricted:

(i) To domestic crushing or to other handlers, or a handler as defined in 7 CFR 998.8, for crushing or fragmenting and exportation (such disposition shall be reported on Form FV-117-5 "Handlers Report of Dispositions of Non-Edible Quality Shelled Peanuts to Crusher or Fragmenter or Dyeing Processor");

(ii) To export to countries other than Canada or Mexico, provided they meet fragmented requirements (such disposition shall be reported on Form FV-117-6 "Handler's Report of Export of Unrestricted Non-Edible Quality Fragmented Peanuts");

(iii) To domestic animal feed use as provided in paragraph (b)(2) of this section or to other handlers, or a handler as defined in 7 CFR 998.8, for such disposition;

(iv) To wildlife feed or rodent bait use in containers labeled as such (such disposition shall be reported on Form FV-117-7 "Handlers Report of Disposition of Non-Edible Quality Peanuts for Wild-Life Feed or Rodent Bait").

(2) Shelled peanuts which fail to meet requirements for disposition to human consumption outlets may be disposed of for use as domestic animal feed: *Provided*, That each lot of peanuts so disposed of is—

(i) Treated with an appropriate coloring or dyeing solution with a minimum of 80 percent of the peanuts showing evidence of the dye or coloring agent;

(ii) Handled and shipped under positive lot identification procedures (except for bulk loads, red tags shall be used and such tags marked, "For Animal Feed—Not for Human Consumption");

(iii) Covered by a valid "negative" aflatoxin certificate; and

(iv) That the handler's bill of lading and his invoice covering the shipment of each such lot include the following statement: "The peanuts covered by this bill of lading (or invoice) are for animal feed only and are not to be used for human consumption."

Handlers shall report such disposition on Form FV-117-8 "Handler's Disposition Report of Dyed Non-Edible Quality Peanuts to Animal Feed Use (Unrestricted Peanuts Only)".

(3) Positive lot identified shelled peanuts failing to meet the quality requirements for human consumption specified in § 997.30(a) due to testing positive for aflatoxin pursuant to § 997.30(c) may be disposed of for "restricted" domestic crushing and reported on form FV-117-5 "Handlers Report of Dispositions of Non-Edible Quality Shelled Peanuts to Crusher or Fragmenter or Dyeing Processor". Such peanuts may also be exported, as "restricted" to countries other than Canada or Mexico. Prior to exportation, the shelled peanuts shall be certified by the Federal or Federal-State Inspection Service as meeting the requirements specified for "fragmented" peanuts. The "in-land" bill of lading and invoice covering the export of "restricted" peanuts must include the following statement: "The peanuts covered by this bill of lading (or invoice) are limited to crushing only and may contain aflatoxin. Exportation of such restricted peanuts shall be reported on Form FV-117-9 "Handler's Report of Export of Restricted Non-Edible Quality Fragmented Peanuts". Meal produced from peanuts which are disposed of to crushing as "restricted" shall be used or disposed of as fertilizer or other non-feed use. To prevent use of restricted meal for feed, handlers shall either denature it or restrict its sale to licensed or registered U.S. fertilizer manufacturers or firms engaged in exporting who will export such meal for non-feed use or sell it to the aforesaid fertilizer manufacturers. Handlers or crushers may detoxify positive tested meal, have it retested, and if such meal is found negative as to aflatoxin content, it may be disposed of for feed use and reported as provided in paragraph (b)(2) of this section.

(4)(i) Handlers who have acquired Segregation 2 and 3 farmer's stock peanuts pursuant to § 997.20(f) may commingle such peanuts or keep them separate and apart. The Segregation 3

farmers' stock peanuts or commingled Segregation 2 and 3 farmers' stock peanut may be disposed of to—

(A) Other handlers, or a handler as defined in 7 CFR 998.8, for shelling, fragmenting, or crushing, as "restricted", or

(B) Crushers for crushing as "restricted".

Handlers may shell such peanuts and further disposition of the shelled peanuts shall be as provided in paragraph (b)(3) of this section.

(ii) Handlers who have acquired Segregation 2 farmers' stock peanuts pursuant to § 997.20(f) and held them separate and apart from Segregation 3 peanuts may commingle the Segregation 2 farmers' stock with Segregation 1 farmers' stock for disposition to domestic crushing or export as inedibles. The Segregation 2 farmers' stock peanuts or commingled Segregation 1 and 2 farmers' stock peanuts may be disposed of to other handlers, or a handler as defined in 7 CFR 998.8, for shelling, fragmenting, or crushing or to crushers. Handlers may shell the Segregation 2 or commingled Segregation 1 and 2 peanuts and dispose of the shelled peanuts:

(A) To another handler, or a handler as defined in 7 CFR 998.8, for fragmenting or crushing;

(B) To export as "unrestricted"; or

(C) To domestic crushing as "unrestricted".

The meal produced from such peanuts may be disposed of without restriction. Prior to exportation, the shelled peanuts shall be certified by the Federal or Federal-State Inspection Service as meeting the requirements specified for fragmented peanuts. If such peanuts are covered by a valid "negative" aflatoxin certificate they may be disposed of as provided in paragraph (b)(1) of this section.

(5) The disposition and reporting requirements applicable to peanuts failing quality requirements for human consumption specified in paragraph (b) of this section shall also apply to loose shelled kernels, fall through and pickouts.

§ 997.50 Inspection, chemical analysis, certification and identification.

Each handler shall, at his own expense, prior to or upon receiving and before shipping or disposing of peanuts, cause an inspection to be made of any such peanuts not covered by a valid inspection certificate, to determine whether they meet the applicable grade requirements effective pursuant to this part and shall comply with such identification requirements prescribed by this part or which the Secretary may prescribe. Each handler shall also cause appropriate samples to be drawn and chemically analyzed by a USDA laboratory or laboratory listed in § 997.30 for wholesomeness as provided in § 997.30 of this part. Such handler shall obtain grade and aflatoxin certificates that such peanuts meet the aforementioned applicable requirements and all such certificates shall be available for examination or use by the Division. Acceptable certificates shall be those issued by Federal or Federal-State inspectors authorized or licensed by the Secretary and USDA laboratories or those listed in § 997.30 of this part. Each handler shall furnish, or cause the inspection service or the laboratory to furnish to the Division, a copy of the inspection certificate and a copy of the results of the chemical analyses issued to him on each lot of shelled peanuts or cleaned inshell peanuts.

Reports, Books and Records

§ 997.52 Reports of acquisitions and shipments.

Each handler shall report acquisitions of Segregation 1 farmers' stock peanuts on Form FV-117-10 "Handlers Monthly Report of Acquisitions" and file reports such other reports of acquisitions and shipments of peanuts, as prescribed in this part. Upon the request of the Division, each handler shall furnish such other reports and information as necessary to enable the Division to carry out the provisions of this part. All reports and records furnished or submitted by handlers to the Division which include data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler shall not be disclosed unless such disclosure is determined necessary by the Secretary to enforce the provisions of this part.

§ 997.53 Verification of reports.

For the purpose of checking and verifying reports filed by handlers or the operation of handlers under the provisions of this part, the Secretary, through its duly authorized agents, shall have access to any premises where peanuts may be held by any handler and at any time during reasonable business hours and shall be permitted to inspect any peanuts so held by such handler and any and all records of such handler with respect to the acquisition, movement, holding, processing or disposition of all peanuts which may be held or which may have been disposed of by the handler. Each handler shall maintain such records of peanuts received, held, and disposed of by the handler, that will substantiate any required reports and will show performance under this part. Such records shall be retained for at least two years beyond the crop year of their applicability.

§ 997.54 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any service, division or branch in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

Dated: November 27, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-28246 Filed 12-3-90; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 90-153]

Tuberculin Test Requirements for Calves Imported From Canada

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations that require tuberculosis testing of certain cattle from Canada before their importation into the United States, to exempt certain calves from testing if they meet specified requirements, including tuberculosis testing of their dams. This action will remove the requirement for testing certain calves that do not present a risk of spreading tuberculosis.

EFFECTIVE DATE: January 3, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Kathleen J. Akin, Import-Export Products, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 755, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7830.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 92 (referred to below as the regulations) regulate the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases. Section 92.418 of the regulations contains specific provisions concerning

the importation into the United States of cattle from Canada.

On May 22, 1990, we published in the **Federal Register** (55 FR 21042–21043, Docket Number 88–034), a document proposing to exempt from the tuberculosis testing requirement certain calves that are not from a tuberculosis-free herd, if their dams have been tested and found free of tuberculosis and certain other conditions are met. We proposed to exempt any calf that was imported with its dam and that had been born after the dam was tested in accordance with the regulations and found free of tuberculosis.

Our proposal invited the submission of written comments, which were required to be received on or before July 23, 1990. We received 2 comments, both in support of the proposed rule.

Based on the rationale set forth in the proposal, we are adopting the provisions of the proposal as a final rule without change.

Miscellaneous

In a final rule published in the **Federal Register** on August 2, 1990 (55 FR 31484–31562, Docket Number 90–023), the regulations in 9 CFR part 92 were reorganized and renumbered. One of the effects of this reorganization is that the regulations concerning tuberculin test requirements for calves imported from Canada are now located in § 92.418, rather than § 92.20. The numbering in this rule has been changed to reflect this reorganization.

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.

Removing the requirement for tuberculosis testing of certain calves will result in a savings to importers, who would otherwise bear the cost of the tests. The cost of testing one calf is approximately $5, and approximately 100 calves have been imported from Canada each year for the past several years. We do not expect this rule to increase the number of calves imported each year. We have reviewed past importations of calves from Canada and have determined that these involve approximately 10 to 20 importers each year, almost all of which are small entities. If all calves imported from Canada qualified for importation without tuberculosis testing, the savings would amount to approximately $500 per year, distributed among approximately 10 to 20 importers. We do not expect that all importers of calves from Canada will be able to arrange for the calves to meet the requirements for importation without tuberculosis testing, so actual savings should be less than this projected maximum. The maximum economic effect on small entities is estimated to be an annual savings of approximately $30 for each of the approximately 10 to 20 small entities expected to import calves.

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 rule contain no 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 part 3015, subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.418 [Amended]

2. Section 92.418(b) is amended by changing the period at the end of paragraph (b)(2)(ii)(B) to read "; or", and by adding a new paragraph (b)(2)(ii)(C) to read as follows:

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(C) For a calf imported with its dam, the date and place the calf's dam was last tested for tuberculosis; that the dam was found negative for tuberculosis on such test; that such test was performed within 60 days preceding the arrival of the calf and dam at the port of entry; and that the calf was born after such test was performed.

* * * * *

Done in Washington, DC, this 29th day of November 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–28371 Filed 12–3–90; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 97

[Docket No. 90–204]

Commuted Traveltime Periods: Overtime Services Relating to Imports and Exports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Veterinary Services (VS) by adding commuted traveltime allowances for Yelm, Washington. Commuted traveltime allowances are the periods of time required for VS employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by VS employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime for this location.

EFFECTIVE DATE: December 4, 1990.

FOR FURTHER INFORMATION CONTACT: Louise R. Lothery, Director, Resource Management Support, VS, APHIS, USDA, Room 740, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7517.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR, chapter I, subchapter D, and 7 CFR, chapter III, require inspection, laboratory testing, certification, or quarantine of certain animals, animal byproducts, plants, plant products, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of VS on a Sunday or holiday, or at any other time outside the VS employee's regular duty hours, the Government charges a fee for the services in accordance with 9 CFR part 97. Under circumstances described in § 97.1(a), this fee may include the cost of commuted traveltime. Section 97.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the time required for VS employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 97.2 of the regulations by adding commuted traveltime allowances for Yelm, Washington. The amendment is set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

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 then $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.

The number of requests for overtime services of a VS employee at the location affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

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.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register.**

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 part 3015, subpart V.)

Paperwork Reduction Act

The information collection provisions that are included in this document have been approved by the Office of Management and Budget under control number 0579-0055. An addendum will be submitted in accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock and livestock products, Poultry and poultry products, Transportation.

Accordingly, 9 CFR part 97 is amended as follows:

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

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

Authority: 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 97.2 is amended by adding in the table, in alphabetical order, the information as shown below:

§ 97.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from	Metropolitan area	
		Within	Outside
Add:			
Washington:			
* * * * *			
Yelm	Olympia		2
Yelm	Seattle		3
* * * * *			

Done in Washington, DC, this 29th day of November 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-28369 Filed 12-3-90; 8:45 am]

BILLING CODE 3410-34-M

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 86-042C]

RIN 0583-AA64

Use of Certain Binders in Meat and Poultry Products and Transfer of Binders to the Tables of Approved Substances; Correction

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: On August 24, 1990, the Food Safety and Inspection Service (FSIS) published a final rule (55 FR 34678) which amended the Federal meat and poultry products inspection regulations to permit the use of additional binders in various meat and poultry products and to transfer text references for specific binders from the individual product standards to the tables of approved substances. Subsequent to publication of the final rule, it was discovered that a portion of the regulation was inadvertently omitted. This document provides notice of that fact and serves to correct the omission.

EFFECTIVE DATES: September 24, 1990.

FOR FURTHER INFORMATION CONTACT: Ashland L. Clemons, Director, Standards and Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; Area Code (202) 447-6042.

SUPPLEMENTARY INFORMATION: On August 24, 1990, FSIS published a final rule (55 FR 34678) which amended the Federal meat and poultry products inspection regulations to permit the use of wheat gluten, tapioca dextrin, whey

protein concentrate, and sodium caseinate as binders in various meat and poultry products. The final rule also transferred text references for specific binders from the individual product standards to the tables of approved substances in 9 CFR 318.7(c)(4) and 381.147(f)(4).

It was subsequently discovered that when transferring the text references for the use of binders from 9 CFR 319.281, Bockwurst, FSIS inadvertently omitted the product "Bockwurst" from the chart in 9 CFR 318.7(c)(4) to permit the use of the substance "Isolated soy protein" at the 2 percent level. It was the intent of the final rule to transfer all information relating to the use of binders from the text of the product standards to the charts of substances to consolidate such information and to eliminate unnecessary repetition. Section 318.7(c)(4) of the Federal meat inspection regulations is revised as shown below.

Done at Washington, DC, on November 23, 1990.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

The following correction is made in FR Doc. 90-19955, Use of Certain Binders in Meat and Poultry Products and Transfer of Binders in Text to the Tables of Approved Substances, published in the **Federal Register** on August 24, 1990 (55 FR 34678).

§ 318.7 [Corrected]

1. On page 34682, under the Products column for the Substance "Isolated soy protein" in the chart of substances in 9 CFR 318.7(c)(4), add the word "Bockwurst" immediately after "Sausage as provided in part 319."

[FR Doc. 90-28367 Filed 12-3-90; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R-0714]

Reserve Requirements of Depository Institutions; Reserve Requirement Ratios

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending 12 CFR part 204 (Regulation D—Reserve Requirements of Depository Institutions) to increase the amount of transaction accounts subject to a reserve requirement ratio of three percent, as required by section 19(b)(2)(C) of the Federal Reserve Act (12 U.S.C. 461(b)(2)(C)), from $40.4 million to $41.1 million of net transaction accounts. This adjustment is known as the low reserve tranche adjustment. The Board has left at $3.4 million the amount of reservable liabilities of each depository institution that is subject to a reserve requirement of zero percent. This action is required by section 19(b)(11)(B) of the Federal Reserve Act (12 U.S.C. 461(b)(11)(B)), and the adjustment is known as the reservable liabilities exemption adjustment. The Board has also increased from $43.4 million to $44.0 million the deposit cutoff level that is used in conjunction with the reservable liabilities exemption amount to determine the frequency of deposit reporting.

DATES: *Effective Date:* December 18, 1990. *Compliance Dates:* For depository institutions that report weekly, the low reserve i.e., transaction accounts within the low reserve requirement tranche adjustment will be effective starting with the reserve computation period beginning Tuesday, December 25, 1990, and with the corresponding reserve maintenance periods beginning Thursday, December 27, 1990, for net transaction accounts, and Thursday, January 24, 1991, for other reservable liabilities. For institutions that report quarterly, the low reserve tranche adjustment will be effective with the computation period beginning Tuesday, December 18, 1990, and with the reserve maintenance period beginning Thursday, January 17, 1991. For all depository institutions, the increase in the deposit cutoff level will be used to screen institutions in the second quarter of 1991 to determine reporting frequency beginning September 1991.

FOR FURTHER INFORMATION CONTACT: Patrick J. McDivitt, Attorney (202/452-3818), Legal Division, or June O'Brien, Economist (202/452-3790), Division of Monetary Affairs; for users of the Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544); Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act requires each depository institution to maintain with the Federal Reserve System reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations. The initial reserve requirements imposed under section 19(b)(2) were set at three percent for total transaction accounts of $25 million or less and at 12 percent on total transaction accounts above $25 million for each depository institution. Section 19(b)(2) also provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the total dollar amount of the transaction account tranche against which reserves must be maintained at a ratio of three percent. The adjustment in the tranche is to be 80 percent of the percentage change in total transaction accounts for all depository institutions determined as of June 30 of each year, and the statute requires an adjustment resulting from decreases as well as increases in total transaction accounts.

Currently, the low reserve tranche on transaction accounts is $40.4 million. The increase in the total of net transaction accounts of all depository institutions from June 30, 1989, to June 30, 1990 was 2.2 percent (from $580.6 billion to $593.1 billion). In accordance with section 19(b)(2), the Board is amending Regulation D to increase the low reserve tranche for transaction accounts for 1991 by $0.7 million to $41.1 million.

Section 19(b)(11)(A) of the Federal Reserve Act provides that $2 million of reservable liabilities [1] of each depository institution shall be subject to a zero percent reserve requirement. Section 19(b)(11)(A) permits each depository institution, in accordance with the rules and regulations of the Board, to designate the reservable liabilities to which this reserve requirement exemption is to apply. However, if transaction accounts are designated, only those that would otherwise be subject to a three percent reserve requirement (i.e., transaction accounts within the low reserve requirement tranche) may be so designated.

Section 19(b)(11)(B) of the Federal Reserve Act provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the dollar amount of reservable liabilities exempt from reserve requirements. Unlike the adjustment for transaction accounts, which adjustment can result in a decrease as well as an increase, the change in the exemption amount is to be made only if the total reservable liabilities held at all depository institutions increases from one year to the next. Total reservable liabilities of all depository institutions from June 30, 1989, to June 30, 1990, declined by 2.8

[1] Reservable liabilities include transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities as defined in section 19(b)(5) of the Federal Reserve Act.

percent (from $1,259.7 billion to $1,224.1 billion). Under section 19(b)(11)(B), the Board's Regulation D will not be changed. Consequently, the reserve requirement exemption for 1991 will remain at the 1990 level of $3.4 million. The effect of the application of section 19(b) of the Federal Reserve Act is to increase the low reserve tranche to $41.1 million, to continue to apply a zero percent reserve requirement on the first $3.4 million of transaction accounts, and to apply a three percent reserve requirement on the remainder of the low reserve tranche. Any portion of this zero percent reserve requirement tranche remaining after the tranche is applied to transaction accounts will be applied to nonpersonal time deposits with maturities of less than 1½ years or to Eurocurrency liabilities, both of which are subject to a reserve requirement ratio of three percent.

The tranche adjustment for weekly reporting institutions will be effective starting with the reserve computation period beginning Tuesday, December 25, 1990, and with the corresponding reserve maintenance periods beginning Thursday, December 27, 1990, for net transaction accounts, and Thursday, January 24, 1991, for other reservable liabilities. For institutions that report quarterly, the tranche adjustment will be effective with the computation period beginning Tuesday, December 18, 1990, and with the reserve maintenance period beginning Thursday, January 17, 1991. In addition, all entities currently submitting Form FR 2900 must continue to submit reports to the Federal Reserve under current reporting procedures.

In order to reduce the reporting burden for small institutions, the Board has established a deposit reporting cutoff level to determine deposit reporting frequency. Institutions are screened during the second quarter of each year to determine reporting frequency beginning the following September. In March of 1985, the Board indexed this reporting cutoff level in an amount equal to 80 percent of the annual rate of increase of total deposits.[2] In July of 1988, in conjunction with approval of the extension of the deposit reporting system, the Board increased the cutoff level base upon which the indexing is to be applied to $40 million. The current reporting cutoff level is $43.4 million.

[2] In November of 1985, the Board amended the definition of "total deposits" as used in determining the cutoff level to include not only gross transaction deposits, savings accounts, and time deposits, but also reservable obligations of affiliates, ineligible acceptance liabilities, and net Eurocurrency liabilities.

From June 30, 1989, to June 30, 1990, total deposits grew 1.6 percent, from $3,654.3 billion to $3,713.6 billion. This results in an increase of $0.6 million in the deposit cutoff level that determines the frequency of reporting from the current $43.4 million to $44.0 million. Based on the indexation of the reserve requirement exemption, the cutoff level for total deposits above which reports of deposits must be filed will remain at $3.4 million. Institutions with total deposits below $3.4 million are excused from reporting if their deposits can be estimated from other sources. The $44.0 million cutoff level for weekly versus quarterly FR 2900 reporting and for quarterly FR 2910q versus annual FR 2910a reporting, and the $3.4 million level threshold for reporting will be used in the second quarter 1991 deposits report screening process, and the adjustments will be made when the new deposit reporting panels are implemented in September 1991.

All U.S. branches and agencies of foreign banks and all Edge and Agreement Corporations, regardless of size, and all other institutions that have reservable liabilities in excess of the exemption level amount prescribed by section 19(b)(11) of the Federal Reserve Act (known as "nonexempt institutions") and total deposits at least equal to the deposit cutoff level are required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900). Depository institutions that have reservable liabilities in excess of the exemption level, but have total deposits less than the deposit cutoff level, may file the FR 2900 quarterly for the twelve month period starting each September. Institutions that obtain funds from non-U.S. sources or that have foreign branches or international banking facilities are required to file the Report of Certain Eurocurrency Transactions (FR 2950/2951) on the same frequency as they file the FR 2900. The deposit cutoff is also used to determine whether an institution with reservable liabilities at or below the exemption level (known as an "exempt institution") must file either the Quarterly Report of Selected Deposits, Vault Cash, and Reservable Liabilities (FR 2910q) or the Annual Report of Total Deposits and Reservable Liabilities (FR 2910a). Exempt institutions (that is, institutions with total deposits less than the exemption amount) are not required to file a deposits report if their deposits can be estimated from other sources.

Finally, the Board may require a depository institution to report on a weekly basis, regardless of the cutoff level, if the institution manipulates its total deposits and other reservable liabilities in order to qualify for quarterly reporting. Similarly, any depository institution that reports quarterly may be required to report weekly and to maintain appropriate reserve balances with its Reserve Bank if, during its computation period, it understates its usual reservable liabilities or it overstates the deductions allowed in computing required reserve balances.

Notice and public participation. The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with the adoption of these amendments because the amendments involve adjustments prescribed by statute and by an interpretative statement reaffirming the Board's policy concerning reporting practices. The amendments also reduce regulatory burdens on depository institutions. Accordingly, the Board finds good cause for determining, and so determines, that notice and public participation are unnecessary and contrary to the public interest.

The provisions of 5 U.S.C. 553(d) relating to notice of the effective date of a rule have not been followed in connection with the adoption of these amendments because the amendments relieve a restriction on depository institutions, and for this reason there is good cause to determine, and the Board so determines, that such notice is not necessary.

Regulatory Flexibility Act analysis. Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendments will not have a significant economic impact on a substantial number of small entities. The proposed amendments reduce certain regulatory burdens for all depository institutions, reduce certain burdens for small depository institutions, and have no particular effect on other small entities.

List of Subjects in 12 CFR Part 204

Banks, Banking, Currency, Federal Reserve System, Penalties, Reporting and recordkeeping requirements.

Pursuant to the Board's authority under section 19 of the Federal Reserve Act, 12 U.S.C. 461 *et seq.*, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS

1. The authority citation for part 204 continues to read as follows:

Authority: Sections 11(a), 11(c), 19, 25, 25(a) of the Federal Reserve Act (12 U.S.C. 248(a), 248(c), 371a, 371b, 461, 601, 611); section 7 of the International Banking Act of 1978 (12 U.S.C. 3105); and section 411 of the Garn-St Germain Depository Institutions Act of 1982 (12 U.S.C. 461).

2. In § 204.9 paragraph (a)(1) is revised to read as follows:

§ 204.9 Reserve requirement ratios.

(a)(1) *Reserve percentages.* The following reserve ratios are prescribed for all depository institutions, Edge and Agreement Corporations, and United States branches and agencies of foreign banks:

Category	Reserve requirement
Net transaction accounts: [1]	
$0 to $41.1 million	3 percent of amount.
over $41.1 million	$1,233,000 plus 12 percent of amount over $41.1 million.
Nonpersonal time deposits by original maturity (or notice period):	
Less that 1½ years	3 percent.
1½ years or more	0 percent.
Eurocurrency liabilities:	3 percent.

[1] Dollar amounts do not reflect the adjustment to be made by the next paragraph.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 28, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-28357 Filed 12-3-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 942

[Docket No. 90239-0281]

RIN 0648-AB50

Cordell Bank National Marine Sanctuary Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Clarification of effective date.

SUMMARY: On May 19, 1989, the Under Secretary of Commerce for Oceans and Atmosphere signed the designation document for the Cordell Bank National Marine Sanctuary. The Sanctuary is an area of marine waters encompassing 397.05 square nautical miles surrounding Cordell Bank, which is located approximately 50 nautical miles west-northwest of San Francisco, California. The notice of designation and the final regulations implementing the designation and regulating the conduct of certain activities were published in the **Federal Register** on May 24, 1989 (54 FR 22417-22425).

While the Sanctuary regulations, which became final and took effect on July 31, 1989, did not prohibit oil, gas and mineral activities within the entire Sanctuary, a Congressional joint resolution, which became law and took effect upon its being approved by the President on August 9, 1990, did do so and required the Secretary of Commerce to revise the Sanctuary regulations to conform within 120 days of enactment (Pub. L. No. 101-74). Section 942.6(a)(3) of the Sanctuary regulations was so revised by a rule published in the **Federal Register** on December 21, 1989 (54 FR 52342).

EFFECTIVE DATE: The regulations in 15 CFR part 942 which were published on May 24, 1989 (54 FR 22417-22425) became effective July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph A. Uravitch, Chief, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Washington, DC 20235, (202/673-5122).

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: November 27, 1990.

John J. Carey,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 90-28354 Filed 12-3-90; 8:45 am]

BILLING CODE 3570-08-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Part 5

[T.D. ATF-306; Re: Notice Nos. 403, 410, 583]

RIN 1512-AA10

Alteration of Class and Type: Vodka (80R276P)

AGENCY: Bureau of Alcohol, Tobacco, and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: ATF is adopting maximum levels for use of citric acid and/or sugar in vodka as proposed in Notice No. 583, published in the **Federal Register** of February 19, 1986, at 51 FR 6009. Without altering its eligibility for the designation "vodka," the product may contain citric acid at a level not exceeding 150 milligrams per liter, and/or sugar at a level not exceeding 2 grams per liter. These levels are intended to ensure that distillers may continue to use citric acid and or sugar to adjust the residual alkalinity caused by charcoal treatment or use of certain glass bottles. These levels are also intended to protect the integrity of the standard of identity for vodka, a product which, by definition, may not have any distinctive character, aroma, taste, or color.

EFFECTIVE DATE: January 3, 1991.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine and Beer Branch, (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

The standard of identity for vodka is defined in 27 CFR 5.22(a)(1) as "neutral spirits so distilled, or so treated after distillation with charcoal or other materials, as to be without distinctive character, aroma, taste or color." Under the provisions of 27 CFR 5.23(a) (2) and (3), up to 2½ percent of harmless coloring, flavoring or blending materials may be added to distilled spirits without altering their class and type, except that such additions are prohibited for neutral spirits which includes vodka. Internal Revenue Ruling 56-98, I.R.C.B. 1956-1, 811, held that the use of sugar, not exceeding two tenths of one percent, and a trace amount of citric acid would not materially affect vodka's taste or alter its basic character. Therefore, the ruling authorizes the use of limited amounts of sugar and citric acid in the production of vodka, and permits its labeling as "vodka." The ruling further states that "if any flavoring ingredients are used, the product must be designated and labeled as 'flavored vodka'."

In 1979, the ATF Laboratory tested samples of vodka produced in accordance with Revenue Ruling 56-98. The laboratory found that these samples contained measurable solids content due to the presence of sugar, and that they also displayed a change in the titratable acidity due to the presence of citric acid. Based on these tests, ATF concluded that vodka treated under Revenue Ruling 56-98 has different chemical characteristics than vodka not treated with sugar or citric acid, and accordingly, did not meet the standard of identity for vodka in § 5.22(a)(1).

In addition, a conflict seemed to exist between the provisions of Revenue

Ruling 56–98 authorizing treatment of vodka with sugar and citric acid, and § 5.23(a)(3) which prohibits any addition of harmless coloring, flavoring and blending materials to neutral spirits.

Notice No. 403

In order to clarify these discrepancies, ATF published an advance notice of proposed rulemaking, Notice No. 403, in the **Federal Register** of January 11, 1982, at 47 FR 1148. This advance notice requested comments on whether ATF should revoke Revenue Ruling 56–98 and prohibit treatment of vodka with sugar and citric acid, or should establish a separate class and type of vodka containing specified quantities of sugar and citric acid. The comment period was extended until July 11, 1982 by notice No. 410, published in the **Federal Register** of April 15, 1982 at 47 FR 16187.

Comments on Notice No. 403

ATF received 16 comments regarding this advance notice of proposed rulemaking. Respondents were almost equally divided over the use of sugar and citric acid in vodka. Eight respondents including two consumers, the David Sherman Corporation, Potter Distillers, National Distillers, Haas Brothers, the Buckingham Corporation, and the State of Michigan opposed the addition of sugar and citric acid to vodka, and favored revoking Revenue Ruling 56–98. Their reasons, were:

1. The revenue ruling is inconsistent with § 5.23 which prohibits the addition of coloring, flavoring or blending materials to neutral spirits.

2. The public perceives vodka as a pure neutral spirit, without distinctive color, aroma, taste, or character, and without added substances such as sugar or citric acid.

3. There is no purpose served by adding sugar and citric acid to vodka.

4. Authorizing sugar and citric acid to be used in vodka will open a pandora's box, and other substances will then be added to vodka.

5. Foreign products should conform to the long established U.S. standard of identity for vodka.

Seven respondents favored permitting the use of sugar and citric acid in the production of vodka by retaining Revenue Ruling 56–98. These included one consumer, Schenley Industries, the Distilled Spirits Council of the United States, Monsieur Henri, Sojuzplodoimport (a Russian import/export company), the National Association of Beverage Importers, and the Heublein Spirits Group. Their comments are summarized as follows:

1. The standard of identity for vodka should be established on an organoleptic basis rather than on a chemical basis. If the addition of sugar and citric acid does not change the character, color, aroma, or taste, then the product is "vodka." consumers judge vodka by taste, not chemical standards.

2. Prohibiting the use of sugar and citric acid in vodka is not in response to consumer interest or a perceived consumer need. Revenue Ruling 56–98 has been in effect for many years without harm or deception to the consumer, and no consumer benefit would accrue by revoking it.

3. Prohibiting the use of sugar and citric acid in vodka would have an "unmeasurable competitive impact" on some industry members who market vodka made according to Revenue Ruling 56–98, and who would suffer financial harm by its elimination.

4. European vodkas have been made using trace amounts of sugar for many years. Prohibiting the labeling of a product containing sugar or citric acid as "vodka" would preclude some European vodkas from being labeled "vodka" in the United States, and would create a non-tariff trade barrier.

Eight of the 16 respondents objected to the proposed establishment of a new class and type of vodka containing sugar and citric acid. The reasons were:

1. Present labeling requirements in part 5 are adequate. Vodka with sugar and citric acid may already be designated "flavored vodka," or labeled with a fanciful name.

2. The revenue ruling should be retained, allowing the use of sugar and citric acid in vodka; thus there is no reason to establish a separate class and type.

3. Addition of a separate class and type of vodka which does not look, smell, or taste differently than vodka, but which is labeled differently, would be very confusing to consumers.

Joseph E. Seagrams favored the establishment of a new class and type of vodka, "vodka schnapps," with prescribed amounts of sugar and citric acid. They suggested this would fill a void in the standards of identity not provided for by "cordials and liqueurs" or "flavored vodka."

Discussion

ATF found support in the written comments for the incorporation of Revenue Ruling 56–98 into the regulations. Several respondents noted that the standards of identity for most distilled spirits including whiskey, gin, brandy, rum and some cordials and liqueurs are based on organoleptic factors—aroma, taste and smell. Logically, they suggest that the standard for vodka should also be based on organoleptic factors. Non-organoleptic factors such as titratable acidity or the solids content should not be used in determining whether a vodka meets the standard of identity requirements. Moreover, characteristics detectable only by chemical analysis have little meaning to consumers, and are not a factor in consumer selection of vodka.

A second theme was that the presence of sugar or citric acid in vodka is not an issue of interest to consumers. ATF has received no consumer inquiries or complaints regarding the presence of sugar or citric acid in vodka, and to prohibit their use would be to address a "problem" which does not exist. These substances have been used in at least some domestic vodkas for over 30 years and their use has not raised any health, or safety problems, or resulted in consumer deception.

A third issue is that sugar or citric acid has been used to treat some European vodkas for many years, and that these products have always been accepted and marketed in the United States as "vodka." If ATF revoked Revenue Ruling 56–98 and prohibited their use in vodka, some traditional European vodkas would be denied entry into the United States, or would be required to be labeled "flavored vodka." Many foreign nations would view this as a non-tariff trade barrier.

ATF also finds limited support in the written comments to Notice No. 403 to propose a separate class and type of vodka containing sugar and citric acid. Only one respondent favored a new class and type of vodka. Written comments pointed out that its establishment would create a new type of vodka which is indistinguishable from "regular" vodka by taste, aroma, or color, but which would be labeled separately, and thus would be very confusing to consumers.

Notice No. 583

As a result of the written comments, ATF proposed incorporating the provisions of Revenue Ruling 56–98 into part 5. In Notice No. 583, published in the **Federal Register** of February 19, 1986, at 51 FR 6009, ATF proposed amending § 5.23(a)(3)(ii) by authorizing the use of up to 2 grams per liter (2,000 parts per million) sugar, and a trace amount (defined as 150 milligrams per liter or 150 parts per million) of citric acid in the production of vodka, without changing its designation as vodka. Because neither sugar nor citric acid are essential components of vodka, ATF proposed amending § 5.23 which regulates additions of substances to distilled spirits, rather than § 5.22(a)(1)

which is the standard of identity for vodka.

Two grams per liter is the same amount of sugar authorized by Revenue Ruling 56–98 (2/10 of 1%), and is the amount of sugar detected in Russian vodkas by the Alcohol and Tobacco Tax (A&TT) Laboratory at the time the ruling was issued. Revenue Ruling 56–98 authorized the use of a trace amount of citric acid in vodka. An examination of the formula which resulted in the ruling reveals that citric acid was present in the vodka in a concentration of 0.0013% or 13 parts per million. In this trace amount, the A&TT Laboratory determined that the addition of citric acid would not materially affect the taste or change the basic character of vodka. Examination of formulas filed with ATF in the years since issuance of the revenue ruling reveals that a "trace amount" of citric acid has varied widely with different formulas, and that there is a need to define the term. Therefore, ATF proposed to define "trace amount" of citric acid as 150 parts per million. ATF believes this concentration of citric acid is sufficient to neutralize residual alkalinity derived from the charcoal treatment of some vodkas, or from the use of certain glass in manufacturing bottles. Under this proposal, vodka made with greater concentrations of sugar or citric acid would be designated "flavored vodka" or labeled with a fanciful name, followed by a truthful and adequate statement of composition under part 5.

Comments on Notice No. 583

In Notice No. 583, ATF asked for specific comments as follows: "While ATF has proposed limitations of 2,000 parts per million sugar, and 150 parts per million citric acid in vodka, we seek comment on whether other limits, either higher or lower, should be prescribed. Comments in support of different limitations should specify how different concentrations of sugar or citric acid would accomplish their intended use in vodka." In response to this notice, ATF received 10 new comments, as follows: 5 from distillers, 2 from consumers, 1 each from a retail liquor dealer, a flavor manufacturer, and a State regulatory agency. Five commenters were opposed to allowing citric acid or sugar to be added to vodka, as follows: Grain Processing Corp., David M. Lemons, New Hampshire Liquor Commission, Piscitelli Wine & Liquor Store, and Ed. Phillips and Sons Co. ATF had previously decided to continue to allow the use of sugar and/or citric acid in vodka, based on the comments received in response to Notice No. 403.

One commenter, the National Distillers and Chemical Corporation, had "no objection to authorizing the use of small quantities of sugar and citric acid * * *" provided it, "does not preclude the present practice of formulating the sugar and citric acid use in vodka in such a manner as to qualify for allowance of credit under 26 U.S.C. 5010." Four commenters were opposed to reducing the usage of citric acid to the level of 150 parts per million: LaVecke Corporation (rectifier of distilled spirits), Continental Flavors & Fragrances, Shelley Netherwood (Flavor Chemist), and Glenmore Distilleries. These commenters were all opposed to reducing the limit for use of citric acid because it would reduce or nullify the credit allowed by 26 U.S.C. 5010, when citric acid and sugar are added to vodka in the form of a product on which Non-beverage drawback has been claimed under 26 U.S.C. 5131. These comments are not germane to the purpose of this rulemaking which is to establish the level at which sugar and/or citric acid can be added without imparting a distinctive character, aroma, taste, or color. The LeVecke Corporation's comment included the results of organoleptic tests which showed that the test panelists could consistently detect the presence of citric acid at the level of 400 parts per million. ATF agrees that at 400 parts per million, the presence of citric acid is detectable. However, ATF's laboratory conducted similar tests and found that 150 parts per million is approximately the threshold at which the presence of citric acid can be detected. As a result, any amount higher than 150 parts per million of citric acid is deemed to impart a distinctive character to the vodka, contrary to the provisions of 27 CFR 5.22(a)(1).

Final Rule

Based on the reasons set forth above, the proposed rule is adopted unchanged.

Formula and Label Approvals

Existing formulas and corresponding labels that are not in compliance with the standards set forth in this T.D. are effectively cancelled March 4, 1991, and where necessary, new formulas and affected labels should be re-submitted to the Product Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, room 6207, 12th & Pennsylvania Ave., NW., Washington, DC 20226.

Regulatory Flexibility Act

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the final rule is not expected (1) To have significant secondary or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this final rule is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects in 27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and Containers.

Issuance

PART 5—[AMENDED]

Paragraph 1. The authority citation for 27 CFR, part 5 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 5.23(a)(3)(ii) is amended to read as follows:

§ 5.23 Alteration of class and type.

(a) *Additions.* * * *

* * * * *

(3) * * * (ii) any material whatsoever in the case of neutral spirits or straight whiskey, except that vodka may be treated with sugar in an amount not to exceed 2 grams per liter, and with citric

acid in an amount not to exceed 150 milligrams per liter; or * * *

* * * * *

Signed: September 17, 1990.

Stephen E. Higgins,

Director.

Approved: October 4, 1990.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 90-28328 Filed 12-3-90; 8:45 am]

BILLING CODE 4810-31-M

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule, amendments.

SUMMARY: This rule amends the Foreign Assets Control Regulations, 31 CFR part 500 (the "Regulations"), to increase to $200 per day the expenses for transactions subject to the Regulations authorized for travel-related costs in countries designated by that Part (Vietnam, Cambodia, and North Korea), exclusive of international and intercity transportation and international telecommunication expenses. This revision will enable U.S. persons to pay costs incurred while travelling in these countries.

EFFECTIVE DATE: December 4, 1990.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel (tel.: 202/535-6020), or Steven I. Pinter, Chief of Licensing (tel.: 202/535-9449), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: Section 500.563 of the Foreign Assets Control Regulations, 31 CFR Part 500 (the "Regulations"), was amended on August 1, 1990 (55 FR 31178) to place per diem limitation on transactions by individuals ordinarily incident to their own travel in Vietnam, Cambodia, and North Korea (the "designated foreign countries"), including payment for living expenses and goods personally consumed there. This rule amends the Regulations to increase the per diem from $100 to $200 for such travel and maintenance expenses, and to exempt expenses for international and intercity transportation and international telecommunications from this limitation. Limitations established for other authorized transactions remain the same, and persons wishing to carry additional currency for such transactions must still obtain a specific license from the Office of Foreign Assets Control.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Part 500

Cambodia, Currency, North Korea, Travel and transportation expense, Vietnam.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as follows:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended: E.O. 9193, 7 FR 5205, 3 CFR 1938-1943 Cum. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943-1948 Comp., p. 748.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 500.563 [Amended]

2. Section 500.563(a)(2) is amended by adding the phrase ", exclusive of expenses for international and intercity transportation and international telecommunications", after the words "such expenses," and by substituting "$200" for "$100."

Dated: November 8, 1990.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: November 27, 1990.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 90-28318 Filed 11-29-90; 10:13 am]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 154, 155, and 156

[CGD 86-034]

RIN 2115-AC29

Hazardous Materials Pollution Prevention; Correction

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard is correcting errors in the final rule entitled "Hazardous Materials Pollution Prevention" which appeared in the **Federal Register** on Tuesday, September 4, 1990 (55 FR 36248). The corrections are of a non-substantial, editorial nature.

EFFECTIVE DATE: October 4, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Gary W. Chappell at (202) 267-0491.

SUPPLEMENTARY INFORMATION: The following corrections are made in the final rule for Hazardous Materials Pollution Prevention published in the **Federal Register** on Tuesday, September 4, 1990 (55 FR 36248). In FR Doc. 90-20664, beginning on page 36248 in the issue of Tuesday, September 4, 1990, make the following corrections:

1. On page 36250, column one, numbered paragraph 13, second paragraph, second sentence, remove "nozzel" and add, in its place, the word "nozzle".

§§ 154.107 and 154.108 [Corrected]

2. On page 36252, column three, numbered paragraph 11, remove "(a)(3)(iii)" and add, in its place, "(a)(2)(iii)".

3. On page 36254, column three, revise numbered paragraph 34 to read as follows:

§ 155.710 [Corrected]

34. In § 155.710, in the introductory text for paragraph (a), by adding the words "or hazardous material" after the word "oil"; in paragraph (a)(1), by removing the word "oil" before the word "transfer" and by adding the words "carried or the cargo" after the word "cargo"; and, in paragraph (a)(2), by adding the words "or the cargo last carried" after the work "carried".

PART 156—[CORRECTED]

4. On page 36255, column two, the authority citation for part 156, add a comma after the words "3 CFR".

§ 156.150 [corrected]

5. On page 36256, column one, last line, remove the word "dding" and add, in its place, the word "adding".

Dated: November 23, 1990.

D.H. Whitten,

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

[FR Doc. 90-28353 Filed 12-3-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 161

[CGD 89-062]

RIN 2115-AD39

Regulations for Required Participation in Vessel Traffic Service New York; Effective Date Change

AGENCY: Coast Guard, DOT.

ACTION: Final rule; change in effective date.

SUMMARY: On August 27, 1990, the Coast Guard published a final rule in the **Federal Register** (55 FR 34908) amending the Coast Guard's Vessel Traffic Management Rules to include participation in Vessel Traffic Service New York. The effective date of the final rule was December 1, 1990. This document suspends required participation in the New York Vessel Traffic Service until January 16, 1991.

EFFECTIVE DATES: This document is effective December 4, 1990. The effective date of 33 CFR 161.501 through 161.580 is January 16, 1991.

FOR FURTHER INFORMATION CONTACT: Bruce Riley, Project Manager, Commandant (G-NSP) U.S. Coast Guard, 2100 2nd Street SW., Washington, DC 20593-0001, Tel. (202) 267-0412, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: A delay in the operational availability of equipment in the New York Vessel Traffic Center has forced the Coast Guard to postpone implementation of the rules. The New York VTS will begin operations as scheduled, on December 5, 1990, however, participation will be voluntary. The period December 5, 1990 through January 15, 1991 will serve as a familiarization period for the VTS watchstanders and the participants. The familiarization period will end midnight January 15, 1991. Participation by vessels listed in § 161.501(c) of the final rule, will be required beginning January 16, 1991.

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

Dated: November 28, 1990.

R.A. Appelbaum,

Rear Admiral, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 90-28363 Filed 12-3-90; 8:45 am]

BILLING CODE 4910-14-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 88-8]

Statements of Account and Filing Requirements for Satellite Carrier Statutory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Technical amendment to final regulations.

SUMMARY: The Copyright Office amends the final regulations for statements of account and filing requirements for section 119 of title 17, United States Code. That section created a new statutory license for certain secondary transmissions made by satellite carriers to satellite home dish owners. The original text appeared in the **Federal Register** on July 3, 1989 (54 FR 27873).

EFFECTIVE DATE: December 4, 1990.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20540. Telephone: (202) 707-8380.

SUPPLEMENTARY INFORMATION: The Copyright Office implemented final regulations concerning the filing of statements of account pursuant to enactment of the Satellite Home Viewer Act of 1988, Public Law 100-667, codified in 17 U.S.C. 119, in an announcement published in the **Federal Register** on July 3, 1989 (54 FR 27873). The announcement incorrectly specified January 31 and July 31 as the dates by which statements of account must be filed. The correct dates are January 30 and July 30. The errors are corrected by this technical amendment to the regulations.

Regulatory Flexibility Act Statement

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, chapter 5 of the U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since the Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[1]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 201

Satellite carrier license.

Final Regulations

For the reasons set out in the preamble in 54 FR 27873, the Copyright Office makes technical amendments to 37 CFR, chapter II as set forth below.

PART 201—[AMENDED]

1. The authority citation for part 201 continues to read as follows:

Authority: Copyright Act, Pub. L. 94-553, 90 Stat. 2541 (17 U.S.C. 702), as amended by Pub. L. 100-667.

§ 201.11 [Amended]

2. Section 201.11(c)(3) is revised to read as follows:

* * * * *

(c) * * *

(3) Statements of Account and royalty fees received before the end of the particular accounting period they purport to cover will not be processed by the Copyright Office. Statements of Account and royalty fees received after the filing deadlines of July 30 or January 30, respectively, will be accepted for whatever legal effect they may have, if any.

Dated: November 13, 1990.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

Librarian of Congress.

[FR Doc. 90-28389 Filed 12-3-90; 8:45 am]

BILLING CODE 1410-08-M

[1] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title (17), except with respect to the making of copies of copyright deposits:). (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

37 CFR Part 201

[Docket No. RM 90-4]

Adjustment of the Syndicated Exclusivity Surcharge

AGENCY: Library of Congress, Copyright Office.

ACTION: Final regulation.

SUMMARY: In response to the regulations adopted by the Federal Communications Commission reinstating its former syndicated exclusivity blackout rules, the Copyright Royalty Tribunal recently amended its rules concerning the syndicated exclusivity surcharge which some cable systems have paid since 1983, under the cable compulsory license, 17 U.S.C. 111. The Tribunal eliminated the surcharge except in the case of a distant commercial VHF station that places its predicted Grade B contour in whole or in part over a cable system. The Copyright Office now amends its cable compulsory license filing procedure regulations to reflect this change.

EFFECTIVE DATE: December 4, 1990.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559, Telephone (202) 707-8380.

SUPPLEMENTARY INFORMATION: On August 16, 1990, the Copyright Royalty Tribunal issued final regulations eliminating the syndicated exclusivity surcharge in certain circumstances. See 55 FR 33604. The Tribunal retained the surcharge, however, for distant commercial VHF stations that place a Grade B contour over a cable system and are not "significantly viewed" or otherwise exempt from the syndicated exclusivity rules in effect on June 24, 1981. The Tribunal reasoned that the surcharge should be retained in this instance to compensate copyright owners who, under the former syndicated exclusivity rules dropped in 1981, enjoyed greater blackout protection than under the current exclusivity rules.

In order to reflect the general elimination of the syndicated exclusivity surcharge and its current application, the Copyright Office amends its regulations governing completion of statement of account forms under the cable compulsory license. The definition of "surcharge," as it appears in § 201.17(h)(1)(ii), is amended to reflect that for accounting periods on or after January 1, 1990, the word refers to the recent Tribunal decision of August 16, 1990. Section 201.17(h)(2)(ii) is amended to reflect that for accounting periods on or after January 1, 1990, the surcharge applies only to those commercial VHF signals that place, in whole or in part, a Grade B contour over the cable system.

Other references to the surcharge in subsections (h)(3) and (h)(7) remain unchanged.

List of Subjects in 37 CFR Part 201

Cable television, Cable compulsory license, Copyright Office.

Final Regulations

In consideration of the foregoing, part 201 of 37 CFR, chapter II is amended in the manner set forth below.

PART 201—[AMENDED]

A. The authority citation for part 201 continues to read as follows:

Authority: Sec. 702, 90 Stat. 2541, 17 U.S.C. 702.

§ 201.17 [Amended]

B. Section 201.17 is amended as follows:

1. Paragraph (h)(1)(ii) is revised to read:

(h) * * *

(1) * * *

(ii) *Surcharge* means the applicable syndicated exclusivity surcharge established by 37 CFR 308.2(d), in effect on January 1, 1983. For accounting periods beginning on or after January 1, 1990, "surcharge" refers to the applicable syndicated exclusivity surcharge established by 37 CFR 308.2(d) in effect on January 1, 1990.

2. Paragraph (h)(2)(ii) is revised to read:

(h) * * *

(2) * * *

(ii) If the 3.75% rate does not apply to certain DSE's in the case of a cable system located wholly or in part within a top 100 television market, the current base rate together with the surcharge shall apply. However, the surcharge shall not apply for carriage of a particular signal first carried prior to March 31, 1972. With respect to statements of account covering the filing period beginning January 1, 1990, and subsequent filing periods, the current base rate together with the surcharge shall apply only to those DSE's that represent commercial VHF signals which place a predicted Grade B contour, in whole or in part, over a cable system. The surcharge will not apply if the signal is exempt from the syndicated exclusivity rules in effect on June 24, 1981.

* * * * *

Dated: November 13, 1990.

Ralph Oman,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 90-28388 Filed 12-3-90; 8:45 am]

BILLING CODE 1410-08-M

37 CFR Part 202

[Docket No. RM 90-8]

Registration of Claims to Copyright; Effective Date of Registration

AGENCY: Library of Congress, Copyright Office.

ACTION: Final regulation.

SUMMARY: This notice is issued to advise the public that the Copyright Office of the Library of Congress is adopting a new regulation to establish the effective date for registrations made under section 408 of the Copyright Act when the previously required filing fee of $10 is submitted in lieu of the $20 filing fee required by the "Copyright Fees and Technical Amendments Act of 1989" (Pub. L. 101-318, 104 Stat. 287). The regulation will be in effect for claims to copyright received in the Copyright Office from January 3, 1991, through December 31, 1991.

EFFECTIVE DATE: January 3, 1991.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559, Telephone (202) 707-8380.

SUPPLEMENTARY INFORMATION: The "Copyright Fees and Technical Amendments act of 1980," Public Law 101-318, July 3, 1990, increases the filing fee for registration of claims to copyright made under section 408 of $10 to $20 effective January 3, 1991. The Copyright Office's past experience with fee increases for copyright registration indicates that a substantial number of claims will be submitted to this Office on and after January 3, 1991, with the old fee of $10. The Office expects that it will continue to receive claims with the old fee for some time and estimates that approximately 100,000 claims will be received with an insufficient fee. The public's failure to remit the full fee can be primarily attributed to Copyright Office literature and application forms in the hands of the public that contain old fee information.

The Office considered a number of options for administratively processing the large number of short fees that are expected. Two options were found to require an inordinate amount of staff

time, which would delay registration of the claims correctly submitted with the $20 fee. The Office estimated that these options would cost 40 to 50 cents for each dollar collected. The Office decided that the additional delay in processing claims and the high cost of assuring receipt of the additional $10 fee before registration made these options unacceptable.

The Office has chosen to implement a third option. The Office will request immediately the payment of the supplementary $10 fee, but will simultaneously process the claim and by this regulation establish the effective date of registration as the date on which the original $10 remittance, application, and copy(s) are received. The Office assumes that the required additional $10 will be received in the Office in most cases by the time the administrative process of registration is completed. If the supplementary fee is not received by the Office, the registration of the claim to copyright will be cancelled with the resultant loss of the effective date of registration. Implementation of this option is less costly than other available options will be less disruptive of Office procedures. The public benefits both from timely processing and cost-effective administration of the registration system.

Under section 410(d) of the Copyright Act, title 17 of the United States Code, the effective date of a copyright registration is "the day on which an application, deposit, and fee, which are later determined by the Register of Copyright or by a court of competent jurisdiction to be acceptable for registration, have all been received in the Copyright Office." Ordinarily, the Copyright Office has required receipt of the full filing fee to establish the effective date of registration. The effective date has significance with respect to the availability of certain remedies. Under section 412, no award of statutory damages or attorney's fees can be made generally for any infringement commenced before the effective date of registration of the work infringed.

The Copyright Act clearly gives the Register of Copyrights discretion to determine the acceptable form of the application, deposit, and fee. The Register decides when the basic requirements for registration have been satisfied, and the effective date is the date on which it is later determined by the Register that the elements received are acceptable for registration. This clearly means that the effective date is designated as an earlier date than the date registration processing is actually completed. Also, it is the Register's determination initially that is controlling. The Register has discretionary authority to determine the acceptability of the application and deposit but the Register's authority is even clearer with respect to fee determinations. Receipt of the proper statutory fee is almost exclusively the interest of the Copyright Office. Congress has decided that a certain portion of the costs of administering the copyright registration system shall be recovered through earned fee services.

To implement the Copyright Fees and Technical Amendments Act of 1989 the Register has decided, after reviewing the costs and benefits of various options, that effective administration of the Copyright Act is better served by processing short fee cases normally, after notification that the full fee must be paid, and then verifying payment of the full fee after registration has been completed. The Register considered and rejected as too costly the option of establishing the effective date after the completion of registration. The Register concluded that it would be unwise to adopt costly effective date procedures with respect to receipt of the proper fee. Since the fee is peculiarly a matter of administrative concern, the Register decided to exercise his rulemaking authority to establish a new effective day policy solely as an interim, emergency policy related to implementation of the new fee structure in calendar year 1991.

Based on past administrative experience, the Register concluded that the administrative problems related to insufficient fees would occur primarily in the first year of the new fee structure. Also one year should be sufficient time to educate the public about the new fee structure. Consequently, this regulation is adopted only for calendar year 1991. In 1992 the Copyright Office will resume its traditional policy of delaying registration of short fee cases until the proper statutory fee is received in the Copyright Office.

The Copyright Office is issuing this regulation to notify the public of the effective date of registration when the old fee of $10 is submitted with claims to copyright deposited during calendar year 1991 and the consequences of not submitting the supplementary fee of $10 in a timely manner. The regulation has no applicability to short fee cases where less than $10 is received. The policy adopted responds strictly to the emergency situation that is created by the administrative problems associated with implementation of a new fee structure.

Moreover, renewal registration requires a special policy, and the Copyright Office will deal separately with renewal registration. Renewal registration costs differ from original registration costs because deposit copies are not processed and examined. Also, registration vests the right. The Office concluded that it is better policy to delay registration of renewal applications until the full fee is received than to register and then cancel if the fee is not received. Renewal registration can be made at any time during the last year of the first term of copyright. In effect, applicants have a year to remit the proper fee, if they apply early in 1991. The Office recognizes that a problem may arise at the end of 1991, if an insufficient fee is received shortly before expiration of the first term. The Office will deal with this problem in a separate proceeding.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that his Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, which is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, of U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the federal Government that are agencies as defined in the Administrative Procedure Act.[1]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 202

Copyrights; Effective date; Registrations.

In consideration of the foregoing, part 202 of CFR 37 chapter II is amended in the manner set forth below.

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[1] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title (17), except with respect to the making of copies of copyright deposits) (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA–FOIA requirements.

PART 202—REGISTRATIONS OF CLAIMS—[AMENDED]

1. The authority citation for party 202 continues to read as follows:

Authority: Section 702, 90 Stat 2451; 17 U.S.C. 702.

2. Section 202.4 is added to read as follows:

§ 202.4 Effective date of registration.

The effective date of registration for claims received in the Copyright Office on or after January 3, 1991, and through December 31, 1991, with a short fee of $10 is the date on which the application, deposit, and $10 fee have all been received in the Copyright Office, provided, the claim is later determined to be acceptable for registration by the Register of Copyrights and a supplementary fee of $10 is received in the Copyright Office. If the supplementary fee is not received promptly after notification of the short fee, the Copyright Office will initiate a proceeding to cancel the copyright registration. If the supplementary fee of $10 is not received in the Copyright Office before the cancellation proceeding is completed, the cancellation will become final and will result in the loss of the effective date of registration. After cancellation, registration could be obtained only by submitting a new application, deposit, and filing fee.

Dated: November 19, 1990.

Ralph Oman,

Register of Copyrights.

James Billington,

The Librarian of Congress.

[FR Doc. 90-28387 Filed 12-3-90; 8:45 am]

BILLING CODE 1410-07-M

POSTAL SERVICE

39 CFR Part 115

Screening of Mail Reasonably Suspected of Being Dangerous to Air Transportation or Postal Employees

AGENCY: Postal Service.

ACTION: Finale rule.

SUMMARY: This rule, which is a revision of a proposed rule published with an invitation to comment in the **Federal Register** on July 20, 1990, 55 FR 29637, amends the regulation for the handling of mail reasonably suspected of being dangerous to persons or property. The present rule, Domestic Mail Manual (DMM) § 115.4, allows, without a search warrant, the opening of any specific piece of mail which is reasonably suspected of posing an immediate danger to life or limb or an immediate and substantial danger to property, and any necessary examination or treatment of the contents of that piece of mail, without compromising the confidentiality of any correspondence inside mail sealed against inspection. The amendment additionally allows, in threatening situations, the examination but not the opening of defined quantities of mail by any means which can ascertain whether one or more mail articles might contain explosives or other dangerous materials, without revealing the contents of correspondence within mail sealed against inspection.

EFFECTIVE DATE: December 4, 1990.

ADDRESSES: Comments on this rule are welcome and will be considered with a view towards making future changes in postal regulations and in developing possible recommendations of the Postal Service regarding additional mail security legislation. Written comments should be addressed to Manager, Prevention and Countermeasures Branch, Office of Criminal Investigations, Postal Inspection Service, room 3327, 475 L'Enfant Plaza SW., Washington, DC 20260-2186. Copies of all written comments will be available at that address for inspection and copying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Stephen J. Haynes, (202) 268-4282.

SUPPLEMENTARY INFORMATION: The new mail "screening" procedures would be initiated only when the Chief Postal Inspector determines that there is a credible threat that the quantities of mail proposed to be screened may include a piece of mail which contains a bomb, explosives, or other material dangerous to life, limb, or property.

The new screening procedures authorized by the amended rule could be conducted only within the territorial jurisdiction of the United States, where the United States Postal Service is responsible for mail transmission and delivery. The new procedures would be required to be conducted without avoidable delay and to be limited to the least quantity of mail necessary to respond responsibly to the threat. The Department of Defense is responsible for determining whether similar mail screening procedures might be adopted for military mail overseas. The deadline for comments expired on August 20, 1990. The time for comment was extended several times, however, at the request of parties who expressed an interest in providing comments. All comments received after expiration of the time for comment, but before adoption of the final rule, have been considered.

After the proposed rule was published for comment, the Congress held hearings on a bill (H.R. 5732) which contained provisions affecting the same subject matter as the proposed rule. Action on the proposed rule change was accordingly deferred pending Congressional consideration of the bill. Congress did not, however, enact H.R. 5732 or any other bill governing the subject matter of the proposed rule, and instead enacted legislation requiring a study and report to be made of this subject.

The supplementary information section accompanying the invitation for comment discussed the legal and practical constraints applicable to any effort to examine the United States mails for bombs or other dangerous devices. None of the Constitutional, treaty, statutory, or logistical constraints applicable to the examination of mail has changed since that time. Neither the comments received nor the pendency of the study, moreover, provides adequate reasons to defer further action on the proposed rule.

On the basis of the comments received, additional mail security experience, and further consideration, both internally and with other agencies, the Postal Service has decided to adopt the proposed regulation with the changes described below.

Evaluation of Comments Received

Territorial scope. Several comments criticized the limitation of the proposed rule to mail within the United States, asserting that a greater risk would appear to attach to United States mail originating within the military postal system which operates outside the United States. These comments did not take account of an agreement between the Postal Service and the Department of Defense which, as amended in 1982, makes the Department of Defense responsible for prescribing rules for the security of military mail overseas. On the basis of this agreement, present Postal Service mail security regulations are limited to U.S. mail within the territorial jurisdiction of the United States. There are comparable rules, adopted by the Department of Defense, governing military mail security overseas. These rules acknowledge the territorial limits of the mail security responsibility of the Postal Service. DoD Postal Manual, Vol. 1, Ch. 8-I (June 1984). Under the agreement, the Postal Service is not authorized to adopt rules which alter or amend the Department of Defense mail security rules. The Postal

Inspection Service, moreover, has jurisdiction to implement the provisions of the rule and to take appropriate action to enforce federal criminal laws pertaining to the mailing of bombs and other dangerous devices only within the territorial limits of the United States. Accordingly, the final rule, like the present rule it amends, is limited to mail within the territorial jurisdiction of the United States where the U.S. Postal Service operates.

Federal Aviation Administration role. Several comments urged the Postal Service not to adopt the proposed rule and instead defer to the Federal Aviation Administration with respect to all matters involving the security of mail which is to be transported by air. These comments did not take into account existing statutory law and a 1979 agreement between the Postal Service and the Federal Aviation Administration.

Federal aviation statutes generally divide the responsibility for all aviation security matters between the Department of Transportation (which includes the Federal Aviation Administration) and the Postal Service. The Department of Transportation and the Federal Aviation Administration are generally responsible for regulating aircraft design insofar as it concerns the safety of persons and property aboard aircraft and the security of passengers and cargo, while the Postal Service is responsible for regulating the safe and expeditious transportation of mail by air.[1] Federal postal statutes also make the Postal Service, rather than the Federal Aviation Administration or the Department of Transportation, responsible for regulating the safe and expeditious transportation of mail by air.[2] Both federal aviation and postal statutes require that postal rules for the safe transportation of mail by air be consistent with federal aviation statutes and with rules adopted under them for the economic regulation of air carriers, but neither body of federal law requires that such postal rules also be consistent with Federal Aviation Administration air passenger and air cargo security rules.[3] Because of different legal constraints which attach to cargo and to mail sealed against inspection, postal mail security rules cannot be aligned with Federal Aviation Administration cargo security rules. Virtually all mail transported by air is mail which is "sealed against inspection" and, therefore, entitled by the Constitution and postal statutes to a higher degree of privacy.[4]

Both the Postal Reorganization Act and the Federal Criminal Code give the Postal Service certain authority to make rules and regulations governing the mailing and mailability of articles which postal customers might send by mail, whether it is to be transported by air or otherwise.[5] As a practical matter, postal customers look to the Postal Service to provide one set of uniform rules both to guide their preparation of articles for mailing and to define their reasonable expectations in the security of mail matter from governmental scrutiny.

The previously mentioned 1979 interagency agreement between the Federal Aviation Administration and the Postal Service, although involving some security procedures that have proven ineffective, recognized the division of air parcel security responsibility between the Federal Aviation Administration and the Postal Service. It requires the Federal Aviation Administration to establish an air cargo parcel security program, the Postal Service to establish an air mail parcel security program, and both agencies to coordinate their activities within their respective spheres. This agreement implicitly reflects a high degree of mutual deference by both agencies to each other. It does not exhibit the type of total, unilateral deference of the Postal Service to the Federal Aviation Administration suggested by the comments suggesting that the Postal Service should defer to the Federal Aviation Administration rather than revise its regulations in the light of current requirements.

As previously noted, the Congress has passed legislation requiring a study of mail and cargo security. The Postal Service intends fully to cooperate with the Federal Aviation Administration in acquitting its responsibility to conduct the study. To defer adoption of the screening procedures pending completion of the study, however, seems imprudent. Use of these procedures in a threat situation might result in the identification of potentially dangerous mail.

"Credible threat" definitions. Certain comments suggested the rule should identify more specifically what situations would be considered "credible threat situations". This phrase is intentionally stated in general terms. Due to the constantly changing nature of terrorist and other threats, it is not possible to define in advance all kinds of security threat information which would reasonably be considered to be "credible". Moreover, to attempt to do so, and publish the results, could give aid to sophisticated terrorists who might use such information to plan threatening activity, evading previously authorized counter-measures. The Postal Service believes that wide latitude is needed to evaluate relevant information and to decide the degree of credibility to be attached to particular information. Considering the wide latitude necessary, the Postal Service is restricting the authority to be granted by this rule to its highest law enforcement official, the Chief Postal Inspector. The Inspection Service is a federal law enforcement agency with established working relationships with domestic and foreign law enforcement, postal, and intelligence agencies, including the Office of Civil Aviation Security of the Federal Aviation Administration.

Proposed routine screening. Several comments questioned the concept of initiating screening only in response to a "credible threat". These comments recommended that mail be X-rayed or otherwise screened routinely. As explained in the invitation for comment, indiscriminate screening of all mail, or even all mail to be tendered to air carriers, is impractical and unwarranted. A decision to screen mail imposes on the public both cost and delay. Given currently available technology and the large quantity of mail to be delivered, indiscriminate mail screening would involve unacceptable delay and substantial increase in the cost of postal service. The results of routine screening would not be as reliable, moreover, as the results of carefully focused screening specially initiated in response to credible threats.

As the Airport Operators Council International stated in their comments on the proposed rule: "While steps should most certainly be in place to make reasonable efforts toward identifying * * * [a package containing a bomb], we are not convinced that sufficient credible threat has been demonstrated in the area of domestic mail to apply more than a regulatory ability to enhance mail screening procedures where necessary on a case-by-case basis."

Several comments recommended expansion of the proposed rule to cover

[1] Federal Aviation Act of 1958, as amended, sections 316, 405, 1111, 49 U.S.C. app. 1357, 1375, 1511 (1988).

[2] 39 U.S.C. 5401 (1988).

[3] Federal Aviation Act, as amended, section 405, 49 U.S.C. app. 1375 (1988); 39 U.S.C. 401(2), 403, 5401 (1988), as enacted by Postal Reorganization Act, section 2.

[4] *Ex parte Jackson*, 96 U.S. 727, 732–733, 735 (1878) (unanimous decision); *U.S.* v. *Van Leeuwen*, 397 U.S. 249, 250–251 (1970) (unanimous decision); 39 U.S.C. 3623(d) (1988).

[5] Federal Criminal Code § 1716(b), 18 U.S.C. 1716(b) (1988); 39 U.S.C. 401(2), 403, 3623–3625, 5401 (1988).

surface as well as air mail. This recommendation has been adopted in the final rule. One comment suggested that the rule apply to mail to be transported by air cargo carriers. The rule, as adopted, is intended to apply to all mail. In addition, clarifying changes have been made where necessary.

Effective Date

Because the rule is intended to authorize protective responses to unforeseen and credible threats to life and property, and would not impose any compliance requirements on the general public or any carrier, the Postal Service hereby finds that good cause exists to make the rule immediately effective.

List of Subjects in 39 CFR Part 111

Postal service.

In view of the considerations discussed above, the Postal Service adopts the following amendment to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 111.1).

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3261, 5001.

PART 115—MAIL SECURITY

2. In part 115, insert a new subsection 115.41 as follows:

§ 115.41 Screening of mail reasonably suspected of being dangerous.

Whenever the Chief Postal Inspector determines that there is a credible threat that certain mail may contain a bomb, explosives, or other material that would endanger life or property, he may, without a search warrant or the consent of the sender or addressee, authorize the screening of such mail by any means which is capable of identifying explosives, or other dangerous contents in the mails, within the limits of this subsection and without opening mail which is sealed against inspection or revealing the contents of correspondence within mail which is sealed against inspection.

a. Screening authorized by this subsection shall be limited to the least quantity of mail necessary responsibly to respond to the threat.

b. Such screening shall be performed in a manner which does not avoidably delay the screened mail.

c. The Chief Postal Inspector may authorize screening of mail by postal employees and by persons not employed by the Postal Service under such instructions as will require compliance with this part and protect the security of the mail. No information obtained as a result of such screening shall be disclosed except as authorized by this part.

d. Mail of insufficient weight to pose a hazard to air or surface transportation and international transit mail shall be excluded from such screening.

e. After screening conducted pursuant to this subsection, mail which is reasonably suspected of posing an immediate and substantial danger to life or limb, or an immediate and substantial danger to property, may be treated by postal employees as provided in § 115.42.

f. After screening, mail sealed against inspection which presents doubts as to whether its contents are hazardous, which cannot be resolved without opening, shall be reported to the Postal Inspection Service. Such mail shall be disposed of in accordance with instructions promptly furnished by the Inspection Service.

3. Renumber present § 115.41 as § 115.42 and add the following caption: "Threatening Pieces of Mail.".

4. Renumber present § 115.42 as § 115.43 and add the following caption: "Reports.".

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 90–28320 Filed 12–3–90; 8:45 am]

BILLING CODE 7710–12–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

45 CFR Part 60

National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners: Confirmation of Effective Date and Technical Amendments

AGENCY: Public Health Service, HHS.

ACTION: Confirmation of effective date and technical amendments to final regulations.

SUMMARY: This final rule amends the existing regulations governing the National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners (the National Practitioner Data Bank), codified at 45 CFR part 60 to: (1) Revise the introductory text to § 60.5 to confirm the date of September 1, 1990, as the effective date on which the National Practitioner Data Bank became operational and the effective date of the codified regulations, and (2) to revise the parenthetical phrase at the end of the section text in § 60.6 to reflect the approval of the Office of Management and Budget (OMB) for information collection requirements in § 60.6(b), which was approved by OMB on March 28, 1990. (A General Notice announcing the opening of the National Practitioner Data Bank was published in the **Federal Register** on August 1, 1990 (55 FR 31239)).

EFFECTIVE DATE: Part 60 added at 54 FR 42722 (October 17, 1989), as amended by this rule, is effective September 1, 1990.

FOR FURTHER INFORMATION CONTACT: Daniel D. Cowell, M.D., Director, Division of Quality Assurance and Liability Management, Bureau of Health Professions, Health Resources and Services Administration, Room 8–67, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301–443–2300.

Accordingly, 45 CFR part 60 is amended as set forth below:

Dated: October 3, 1990.

James O. Mason,

Assistant Secretary for Health.

Approved: November 16, 1990.

Louis W. Sullivan,

Secretary.

PART 60—NATIONAL PRACTITIONER DATA BANK FOR ADVERSE INFORMATION ON PHYSICIANS AND OTHER HEALTH CARE PRACTITIONERS

1. The authority citation for 45 CFR part 60 continues to read as follows:

Authority: Sections 401–432 of the Health Care Quality Improvement Act of 1986, Pub. L. 99–660, 100 Stat. 3784–3794, as amended by sec. 402 of Pub. L. 100–177, 101 Stat. 1007–1008 (42 U.S.C. 11101–11152).

§ 60.5 [Amended]

2. In § 60.5 introductory text, remove the phrase "the effective date of these regulations or the date of the establishment of the Data Bank, whichever is later" and add the phrase "September 1, 1990,".

§ 60.6 [Amended]

3. The parenthetical phrase at the end of the section text in § 60.6 is revised to read "(Approved by the Office of Management and Budget under control number 0915–0126)."

[FR Doc. 90–28326 Filed 12–3–90; 8:45 am]

BILLING CODE 4160–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 88–161; FCC 90–372]

Revision of Certain Filing Procedures for Mobile Services Division Applications and the Elimination of Form 430

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Further Order on Reconsideration was written in response to several requests for further reconsideration of the Memorandum Opinion and Order (MO&O), 4 FCC Rcd 5654 (1989), released July 20, 1989, 54 FR 31031, July 26, 1989. That MO&O resolved petitions for reconsideration and addressed comments seeking modification of the Report and Order, 3 FCC Rcd 6684 (1988), 53 FR 48909, December 5, 1988, that amended part 22 of the Commission's rules to require the filing of microfiche copies of applications and pleadings filed with the Mobile Services Division. The Further Order on Reconsideration revises and clarifies the adopted rule. The effect of the Order is to increase efficiency in Commission public reference rooms and, therefore, speed service to the public. The Commission did modify the labelling requirements contained on microfiche filings to improve the ease of use of the microfiche.

EFFECTIVE DATE: February 4, 1991.

FOR FURTHER INFORMATION CONTACT: Leila Brown, Mobile Services Division, Common Carrier Bureau (202) 632–6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Order on Reconsideration in CC Docket No. 88–161, adopted November 5, 1990 and released November 28, 1990. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

1. In this Further Order on Reconsideration the Commission has denied petitions for reconsideration of its Memorandum Opinion and Order (MO&O), 4 FCC Rcd 5654 (1989), which amended the Report and Order, 3 FCC Rcd 6684 (1988) establishing the requirement that various Mobile Services filings be submitted on microfiche. The MO&O amended the Report and Order to permit microfiche copies for opposition and reply pleadings to be submitted within 15 days after the paper copies have been filed and to allow applicants, in emergency situations, to request an extension of time in which to file microfiche copies of filings in limited circumstances. The Commission rejected a petition for reconsideration from Telocator Network of America which argued that the Commission should reconsider its decision that documents filed under part 22 of the rules be filed on microfiche. The Commission also denied a petition for reconsideration from Blooston, Mordkofsky, Jackson & Dickens requesting that the Commission permit microfiche copies of all pleadings, not just oppositions and replies, to be filed 15 days after the paper copies have been submitted. The Commission found no new arguments to justify a change of its decisions in the Report and Order and the MO&O. The Commission did modify the labelling requirements contained on microfiche filings to improve the ease of use of the microfiche.

2. Final Regulatory Flexibility Analysis. The microfiche filing requirement is the best available means of ensuring the integrity of Mobile Services Division files and utilizing scare Commission space, thus enabling the Commission to provide service to the public with greater speed and efficiency.

3. Paperwork Reduction Act Statement. The Proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

4. Authority for this Rulemaking is contained in sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

5. Wherefore, for the foregoing reasons, part 22 of the Commission's Rules *is hereby amended* as specified in the Rule section appended to this summary. The amendments adopted in this Order for part 22 licensees will become effective February 4, 1991.

6. List of Subjects in 47 CFR Part 22

Communications common carriers, Microfiche filing requirement.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

PART 22—[AMENDED]

Rule Changes

Part 22 of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 22 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

§ 22.6 [Revised]

2. Section 22.6(d)(2) is revised to read as follows:

* * * * *

(d) * * *

(2) Non-cellular and Non-Initial Cellular Applications. All non-cellular and non-initial cellular applications and all amendments must have the following information printed on the mailing envelope, the microfiche envelope, and on the title area at the top of the microfiche:

(i) The name of the applicant;

(ii) The city and state of the application;

(iii) The month year of the document;

(iv) Name of the document;

(v) File number and call sign, if assigned (for non-cellular filings); and

(vi) The market number and block (for cellular filings). Each microfiche copy of pleadings shall include:

(A) The month and year of the document;

(B) Name of the document;

(C) Name of the filing party;

(D) File number and call sign, if assigned (for non-cellular filings);

(E) Market number and block (for cellular filings). Abbreviations may be used if they are easily understood.

* * * * *

[FR Doc. 90–28321 Filed 12–3–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–389; RM–7339]

Radio Broadcasting Services; Monticello, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Markey Broadcasting Co., Inc., allots Channel 259A to Monticello, New York, as the community's second local FM service. Channel 259A can be allotted to Monticello with a site restriction of 2.9 kilometers (1.8 miles) west to avoid a short-spacing to Station WWWK, Channel 257A, Ellenville, New York. The coordinates for Channel 259A are North Latitude 41–39–09 and West Longitude 74–43–34. Canadian concurrence has been received since Monticello is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective January 14, 1991. The window period for filing applications will open on January 15, 1991, and close on February 14, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–389, adopted November 7, 1990, and released November 29, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Channel 259A at Monticello.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–28358 Filed 12–3–90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90–334; RM–7341]

Radio Broadcasting Services; Sweet Home, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Galaxy Broadcast Partners, substitutes Channel 296C1 for Channel 296C2 at Sweet Home, Oregon, and modifies the construction permit of Station KSKD to specify operation on the higher powered channel. *See* 55 FR 29391, July 19, 1990. Channel 296C1 can be allotted to Sweet Home in accordance with the Commission's minimum distance separation requirements and can be used at the transmitter site specified in Station KSDK's outstanding construction permit. The coordinates for Channel 296C1 at Sweet Home are North Latitude 44–29–02 and West Longitude 122–34–55. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 14, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–334, adopted November 7, 1990, and released November 29, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 296C2 and adding Channel 296C1 at Sweet Home.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–28359 Filed 12–3–90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB41

Endangered and Threatened Wildlife and Plants; Listing of the Steller Sea Lion as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The service is making permanent the Steller (northern) sea lion (*Eumetopias jubatus*) to the List of Endangered and Threatened Wildlife which was added as an emergency rule and was due to expire on December 3, 1990. This measure, required by the Endangered Species Act of 1973, corresponds with a determination of threatened status by the National Marine Fisheries Service, which has jurisdiction for the Steller sea lion.

EFFECTIVE DATE: The amendment to § 17.11(h) published on April 10, 1990 (55 FR 13488) is adopted as a final rule as of December 4, 1990 and continues in effect.

FOR FURTHER INFORMATION CONTACT: Dr. Larry Shannon, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service (452 ARLSQ), Washington, DC 20240, (703/358–2171, FTS 921–2171).

SUPPLEMENTARY INFORMATION: Responsibility for the Steller sea lion under the Endangered Species Act (Act) lies with the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Department of Commerce. Section 4(a)(2) of the Act provides that NMFS must decide whether a species under its jurisdiction should be classified as endangered or threatened. The Fish and Wildlife Service (FWS) is responsible for the actual addition of a species to the List of Endangered and Threatened Wildlife in 50 CFR 17.11(h).

The FWS had followed the emergency rule of NMFS that determined the Steller sea lion to be threatened (April 5, 1990; 55 FR 12645) with its own emergency rule adding the species to the list (April 10, 1990; 55 FR 13488). That rule would

have expired December 3, 1990, if this final rule had not been published.

NMFS published its determination of threatened status for the Steller sea lion on November 26, 1990 (55 FR 49204). Accordingly, the FWS is adding the Steller sea lion as a threatened species to the List of Endangered and Threatened Wildlife. Because this action of the FWS is nondiscretionary and the species is already listed under the above emergency rule, the FWS finds that good cause exists to omit the notice and public comment procedures of 5 U.S.C. 553(b).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Export, Import, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of Chapter 1, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.11 [Amended]

2. The amendment to § 17.11(h) published on April 10, 1990 (55 FR 13488) is adopted as final and continues in effect.

3. Section 17.11(h) is further amended by revising the "When listed" column entry for "Sea-lion, Steller * * *" under MAMMALS in the List of Endangered and Threatened Wildlife to read as "384E, 408".

Dated: November 26, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–28386 Filed 12–3–90; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 55, No. 233
Tuesday, December 4, 1990

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 90-012P]

RIN 0583-AB28

Poultry Products Containing Pork; Trichinae Treatment

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend § 381.147 of the Federal poultry products inspection regulations (9 CFR 381.147) to provide that poultry products containing pork as an ingredient would be subject to the same trichinae treatment requirements as those specified in § 318.10 of the Federal meat inspection regulations (9 CFR 318.10) for meat products consisting of mixtures of pork and other ingredients. The proposal would eliminate inconsistencies which currently exist in the meat and poultry products inspection regulations regarding trichinae treatment measures.

This action is being proposed as a result of a petition from Sara Lee Corporation of Chicago, Illinois.

DATES: Comments must be received on or before January 3, 1991.

ADDRESSES: Written comments may be mailed to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT: Mr. William Smith, Director, Processed Products Inspection Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447-3840.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

FSIS has determined that this proposed rule is not a major rule under Executive Order 12291. It would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geograhic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in expert or domestic markets.

Effects on Small Entities

The Administrator has made an initial determination that this proposed rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The proposal would amend § 381.147 of the Federal poultry products inspection regulations to provide that certain pork products, when used as ingredients in poultry products, would not be required under certain specified conditions to receive treatment for the destruction of trichinae as provided in § 381.10 of the Federal meat inspection regulations. The proposal would benefit producers of poultry products containing pork ingredients by providing certain specified exemptions from the trichinae treatment requirements. However, the Agency has determined that the benefits would not be significant, and the number of producers affected would not be substantial.

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments should be sent to the Policy Office and should refer to Docket Number 90-012P. Any person desiring opportunity for oral presentation of views as provided under the Poultry Products Inspection Act must make such request to Mr. Smith so that arrangements may be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this action will be made available for public inspection in the Policy Office between 9 a.m. and 4 p.m., Monday through Friday.

Background

Trichinella spiralis or "trichina" is a parasitic worm that causes the disease trichinosis in virtually all warm blooded animals. The most common way for humans to acquire trichinosis is by ingesting undercooked pork or bear meat infected with trichina cysts. Trichinae exist in these meats as larval cysts. If a person or animal eats this infected meat, the larvae leave the digested cysts, mature into adults in the intestinal system of the person or animal, and mate. The females then produce live larvae that travel through the circulatory system, invade the victims' muscles, and form cysts. As encysted larvae, they survive until the cyst becomes calcified or the host dies. People with trichinosis suffer from diarrhea, shortness of breath, fever, and swelling. They can also suffer slight to extremely intense pain and death.

Section 318.10 of the Federal meat inspection regulations (9 CFR 318.10) requires that products containing raw pork must be treated for the destruction of trichinae unless the products will be fully cooked by the consumer or the raw pork has been found to be trichinae free. Treatment is not required unless there is the likelihood the product may not be fully cooked before being eaten. If such likelihood exists, the product must be treated by one of the methods prescribed in paragraph (c) of § 318.10.

On December 10, 1974, FSIS published a rule in the **Federal Register** (39 FR 42900) which amended § 381.147 (d) of the Federal poultry products inspection regulations (9 CFR 381.147(d)) to provide that poultry products containing pork as an ingredient must be treated to destroy possible live trichinae by one of the methods prescribed in § 381.10 (c) of the Federal meat inspection regulations (9 CFR 318.10(c)), or in lieu of such treatment the prok ingredient may be so treated. The regulation was promulgated in response to the growing interest by processors to produce poultry products containing pork as an ingredient.

Generally, poultry products are fully cooked prior to consumption; however, there is the possibility that some, because of their appearance, may not be fully cooked before being eaten. In the latter instance, the possibility of human infection by live trichinae exists if the poultry product contains a pork ingredient, and the product is consumed

raw, undercooked, or otherwise untreated for the destruction of this parasite.

As indicated in the regulation cited above (9 CFR 381.147(d)), only the treatment methods contained in paragraph (c) of § 318.10 of the Federal meat inspection regulations were made applicable to poultry products containing pork by way of the December 10, 1974, regulation amendment. However, other applicable provisions of § 318.10 of the Federal meat inspection regulations were not included in the poultry products inspection regulations.

On March 5, 1990, FSIS received a petition from Sara Lee Corporation of Chicago, Illinois, to amend § 381.147 (d) of the poultry products inspection regulations to make applicable to poultry products containing pork as an ingredient the applicable provisions of § 318.10 of the Federal meat inspection regulations regarding trichinae treatment. The petitioner contends that the language contained in § 381.147(d) results in inconsistent regulation of comparable meat and poultry products, that poultry products which contain pork as an ingredient are required to be treated as prescribed in § 381.10 (c) of the meat inspection regulations, while similar meat products containing pork as an ingredient have alternatives under the provisions of paragraphs (e) and (f) of § 318.10.

The Agency agrees that the meat and poultry products inspection regulations are inconsistent on this point.

The Proposal

FSIS is proposing to amend § 381.147(d) of the poultry products inspection regulations (9 CFR 381.147(d)) to provide that poultry products containing pork would be subject to the same trichinae treatment requirements as those specified in § 318.10 of the Federal meat inspection regulations (9 CFR 318.10) which are applicable to meat products consisting of a mixture of pork and other ingredients and to pork which has been found to be trichinae free. Pork which has been found to be trichinae free under the provisions of § 318.10 (a)(2), (e) and (f) of the Federal meat inspection regulations (9 CFR 318.10 (a)(2), (e) and (f)) is not required to be treated for the destruction of trichinae. Accordingly, poultry products containing pork which has been found to be trichinae free are not required to be treated. Also, the provision of 9 CFR 318.10(b) applicable to ground meat mixtures containing pork and beef, veal, lamb, mutton, or goat meat and other products consisting of mixtures of pork and other ingredients is included. It is proposed that ground poultry mixtures containing pork muscle tissue which the Administrator determines, at the time the labeling for the product is submitted for approval, or upon subsequent reevaluation of the product, would be prepared in a manner that the product might be eaten rare or without thorough cooking because of the appearance of the finished product or otherwise, shall be treated for the destruction of trichinae, as prescribed in § 318.10(c).

Therefore, § 381.147(d) of the poultry products inspection regulations (9 CFR 381.147(d)) would be a amended as follows.

List of Subjects in 9 CFR 381

Poultry products inspection; Processing requirements; Trichinae treatment.

1. The authority citation for part 381 would continue to read as follows:

Authority: 7 U.S.C. 450; 21 U.S.C. 451–470; 601–695; 33 U.S.C. 1254; 7 CFR 2.17, 2.55.

2. Section 381.147 would be amended by designating the last sentence of paragraph (d) as paragraph (d)(1) and by adding new paragraphs (d)(2) and (d)(3) to read as follows:

§ 381.147 Restrictions on the use of substances in poultry products.

* * * * *

(d) * * *

(2) Pork from carcasses or carcass parts, used as an ingredient in poultry products, that have been found free of trichinae, as described under § 318.10 (a)(2), (e) and (f) of the Federal meat inspection regulations (9 CFR 318.10 (a)(2), (e) and (f)), is not required to be treated for the destruction of trichinae.

(3) Ground poultry mixtures containing pork muscle tissue which the administrator determines at the time the labeling for the product is submitted for approval in accordance with part 381 of the regulations in subchapter C, or upon subsequent reevaluation of the product, would be prepared in such a manner that the product might be eaten rare or without thorough cooking because of the appearance of the finished product or otherwise, shall be effectively heated, refrigerated or cured to destroy any possible live trichinae, as prescribed in § 318.10(c) of the Federal meat inspection regulations (9 CFR 318.10(c)), at the official establishment where such products are prepared.

* * * * *

Done at Washington, DC on: November 13, 1990.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19, 20, 21, 30, 36, 40, 51, 70 and 170

RIN 3150-AC98

Licenses and Radiation Safety Requirements for Large Irradiators

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations by establishing a new part 36 to specify radiation safety requirements and licensing requirements for the use of licensed radioactive materials in large irradiators. Irradiators use gamma radiation to irradiate products to change their characteristics in some way. The safety requirements would apply to large panoramic irradiators (those in which the material being irradiated is in air in a room that is accessible to personnel when the source is shielded) and certain large underwater irradiators in which the source always remains shielded under water and the product is irradiated underwater. The rule would not cover self-contained dry-source-storage irradiator devices, instrument calibrators, medical uses of sealed sources (such as teletherapy), or nondestructive testing (such as industrial radiography).

DATES: Submit comments by March 4, 1991. Comments received after this date will be considered if it is practical to do so, but the Commission can assure consideration only for comments received on or before this date.

A public meeting on the proposed rule will be held on February 12 and 13, 1991, in Rockville, Maryland.

ADDRESSES: Submit comments to: The Secretary of the Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Copies of comments received and documents referenced in this proposed rule may be examined at the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen A. McGuire, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–3757, or Mr. Steven L. Baggett, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–0542.

To obtain further information on and to register for the public meeting contact: Ms. Jayne McCausland, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-3643.

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I. Large Irradiators

Irradiators use gamma radiation to irradiate products to change their characteristics in some way. Irradiators are used for a variety of purposes in research, industry, and other fields. Irradiators covered by this proposed rule are those large enough to deliver a dose exceeding 500 rads (5 grays) in one hour at a distance of one meter. The proposed rule does not cover self-contained irradiator devices in which the volume being irradiated is totally inaccessible to people.

Irradiators use either radioactive materials or electronic machines (x-ray machines or accelerators) to produce very high radiation dose levels. The NRC and Agreement States regulate irradiators using radioactive byproduct materials. Electronic machine irradiators are regulated by the Occupational Safety and Health Administration (OSHA) and States. The radioactive materials, generally cobalt-60 or cesium-137, are contained in sealed sources or capsules made of stainless steel to prevent the spread of the radioactive materials. Most often the sealed radioactive sources are stored in water pools when not in use, although some irradiators use solid shields in which to store the sources. In order to irradiate products, the sources are usually lifted out of the pool or solid shield into the air. However, in some irradiators the products to be irradiated are lowered into the pool. For large commercial production irradiators, the total activity of the sources typically exceeds 1,000,000 curies (3.7×10^{16} becquerels), and the product to be irradiated moves past the sources on an automated conveyor system.

In 1988, roughly 85 percent of the capacity of large irradiators was used to sterilize disposable medical products and supplies such as disposable rubber gloves and syringes. The past two decades have been a slow but steady growth in the use of disposable medical products. Prior to that time, hospitals had recurring problems with biological cross-contamination (the spread of infection from one patient to another). An important cause of cross-contamination was the incomplete sterilization of certain medical products such as rubber gloves and syringes. The use of disposable products was found to greatly diminish the extent of the problem.

For years, sterilization of medical products was done primarily with heat or the chemical ethylene oxide. Ethylene oxide was used for some products that could not be satisfactorily sterilized with heat because the product would be damaged. In 1978, the EPA declared that ethylene oxide was a mutagen, possibly a carcinogen, and that its use should be carefully reviewed. Ethylene oxide residues on products thus began to be of greater concern. In 1984, OSHA established a new workplace exposure limit for ethylene oxide that lowered the acceptable level from 50 parts per million in air to 1 part per million, making its use more difficult. These changes placed the use of ethylene oxide under regulatory constraint. As a result, sterilization by gamma irradiation became the only viable alternative for sterilizing those products that would be damaged by heat.

In recent years the increasing incidence of Acquired Immune Deficiency Syndrome (AIDS) has increased the demand for disposable medical products. Combined, these factors have led to a gradually increasing use of gamma radiation in the sterilization of medical products.

Most of the remaining irradiation processing capacity is used for chemical processing, primarily the induction of polymerization in plastics. A small amount of irradiator capacity is used for research on the effects of very high doses of radiation, the production of sterile male insects for insect eradication programs, and other specialized uses.

The Food and Drug Administration has approved the use of gamma irradiation for the disinfestation and preservation of foodstuffs (21 CFR 179.26). Any food may be irradiated up to 100,000 rads (1,000 grays) for the purpose of disinfestation, such as to kill insects and parasides. Any fresh food may be irradiated up to 100,000 rads (1,000 grays) to inhibit growth or maturation, which thereby reduces spoilage. Pork may be irradiated up to 100,000 rads (1,000 grays) to kill the organisms that cause trichinosis. Dry and dehydrated foods may be irradiated up to 3,000,000 rads (30,000 grays) for microbial disinfeciton. Thus, irradiation is an alternative to chemical preservatives and can reduce the use of pesticides and fumigants to control insect infestation of foods.

Presently there is very little preservation of food by irradiation done in the United States. Congress, however, supports food irradiation and has appropriated money to the Department of Energy (DOE) to support the construction of six food irradiators.

There are other potential uses of irradiation. Irradiation can sterilize biomedical wastes from hospitals. Currently, potentially infectious wastes are usually incinerated. Another potential use is the sterilization of toilet wastes from airplanes and ships that arrive from abroad. Laws require that those wastes must be considered disease-bearing and that they be sterilized. Currently, the wastes are usually sterilized by incineration.

Another potential use is the sterilization of sludge from sewage plants. Sludge could be used as a fertilizer if the pathogens in it were known to be killed and if concentrations of certain heavy metals and toxic chemicals were low enough. Irradiation could kill the pathogenic organisms but would have no effect on heavy metals or toxic chemicals.

With so many different uses and potential uses, irradiator designs are varied to suit specific applications. Therefore, it is desirable to establish basic criteria to ensure a high standard of radiation safety in the design and use of irradiators. However, this should be accomplished in a way that does not unnecessarily restrict the logical use and growth of their applications.

Because of the variety of designs, four general categories of irradiators have been defined by the American National Standards Institute (ANSI). The categories are as follows:

Category I—Self-contained, Dry-Source-Storage Irradiators

This type of irradiator is built as a self-contained device. The sealed sources are completely enclosed within a shield constructed of solid materials. Human access to the sealed source and

the space subject to irradiation is not physically possible. The physical size of the device, the space subject to irradiation, the source strength, or all three are generally not large.

This proposed rule does not cover self-contained dry-source-storage irradiators (Category I) for several reasons. First, they are devices that the licensee usually purchases without playing any part in their design manufacture. Also, because safety features are designed into them, self-contained irradiators present less potential hazard and they are considered to be adequately dealt with by existing requirements. This type of irradiator (Category I) would continue to be licensed under the general requirements of 10 CFR 30.33 using the criteria in Regulatory Guide 10.9, Revision 1, "Guide for the Preparation of Applications for Licenses for the Use of Self-Contained Dry Source-Storage Irradiators," December 1988, and also "Standard Review Plan for Applications for Licenses by the use of Self-Contained Dry Source-Storage Gamma Irradiators," December 1988.

Category II—Panoramic, Dry-Source-Storage Irradiators

This category includes irradiators in which the sealed sources are stored in a shield constructed of solid materials and are fully shielded when not in use. Irradiations occur in air within a room accessible to personnel only while the sources are shielded. This category also includes certain beam type irradiators in which the source remains partially shielded. Irradiators of this type are covered by the proposed rule.

Category III—Underwater Irradiators

This category includes irradiators in which the sealed sources are always in a storage pool and are shielded at all times. Human access to the sealed sources and the space subject to irradiation is not physically possible. Irradiators of this type are covered by the proposed rule.

Category IV—Panoramic, Wet-Source-Storage Irradiators

This category includes irradiators in which the sealed sources are in a storage pool containing water and are fully shielded when not in use. Irradiations occur in air within a room made inaccessible to personnel by an entry control system while the sources are exposed. Irradiators of this type are covered by the proposed rule.

II. Need for a Rule

Large irradiators are currently licensed primarily under: (1) The general provisions of 10 CFR 30.33, which requires that "equipment and facilities are adequate" and that the "applicant is qualified by training and experience;" (2) the general requirements of part 20, for example, does limits and the need for "adequate" surveys; and (3) the specific requirements in 10 CFR 20.203(c)(6) and (7) that deal with access control requirements for panoramic irradiators. There is also a draft regulatory guide FC 403-4, "Guide for the Preparation of Applications for Licenses for the Use of Panoramic Dry Source-Storage Irradiators, Self-Contained Wet Source-Storage Irradiators, and Panoramic Wet Source-Storage Irradiators," that was published in January 1985. However, the scope of the guide is limited, and many subjects are not covered or are covered in a way now considered obsolete. On subjects that are not covered in the regulations or guide or for which there are no criteria on what is acceptable, the applicant has no way of knowing what will be accepted. Similarly, the license reviewer may be uncertain about what should be required. If the license reviewer considers the application incomplete or inadequate, he or she sends a "deficiency letter" to the applicant explaining what additional information is needed. Review of the application is not resumed until a written response from the applicant has been received. This can substantially delay issuance of a license.

Thus, although the safety requirements and policies are generally understood and agreed upon, they are contained in regulations, a regulatory guide, and specific licensing conditions. This rule would consolidate, clarify, and standardize the requirements for current and future irradiators.

A rule would also make the NRC's licensing reviews and inspections more efficient. If requirements are clearly stated in a rule, license applications could be shorter because there would be no need for applicants to describe what they would do in areas covered by the rule. The NRC could then issue licenses with fewer license conditions. Inspections would be more efficient because there would be a uniform set of requirements.

At present, aside from the specific requirements in § 20.203 on access control, many requirements are those committed to by the applicant in its license application. The wording of similar requirements can vary slightly from licensee to licensee. This makes the NRC inspector's job more difficult because he or she must determine precisely what each licensee is committed to doing.

There are at this time a number of new large irradiators either under construction or planned. In addition, Congress has appropriated money in support of the construction of six food irradiators. Thus, a significant expansion in irradiator operations is expected. Developers of these new facilities may not be familiar with NRC requirements. A rule would help make NRC's requirements clear to people building new irradiators.

There are also some areas in which either technology is changing (such as computer controllers) or NRC policy is evolving (such as quality assurance). A rule can provide comprehensive and up-to-date requirements in these areas that would be consistently and uniformly applied.

In addition, there were a number of lessons learned from a leaking source accident that occurred at an irradiator operated by Radiation Sterilizers, Inc. in Decatur, Georgia, in 1988. An analysis of the incident and a discussion of the lessons learned appear in the report titled "Leakage of an Irradiator Source—The June 1988 Georgia RSI Incident," NUREG-1392. One lesson learned was a need for detailed emergency plans. The NRC agrees that there is a need for plans to deal with emergencies. The proposed rule contains a detailed list of emergency and abnormal events for which the licensee must have a written emergency procedure (§ 36.53(b)). The procedures must be described in the license application (§ 36.13(c)). Operators must be trained in the procedures (§ 36.51(a)(4) and (g)) and must participate in an emergency drill annually (§ 36.51(d)).

Another lesson learned was the importance of proper training. The NRC believes in the importance of proper training for irradiator operators and the radiation safety officer. The proposed rule contains a detailed description of the training that an operator must receive (§ 36.51). The license application must describe the training program for operators and the qualifications of the radiation safety officer. These would then be evaluated by NRC on a case-by-case basis. The proposed rule also would require drills of the emergency procedures (§ 36.51(d)(6)). Specialized training in decontamination would not be required because decontamination, if extensive, should be done by specialists who are experienced in decontamination work rather than by irradiator personnel. Thus, the proposed

rule would require that decontamination be done by a licensee authorized to do that type of work (§ 36.59(d)).

Included in the report was a recommendation for a "Community Relations Plan" to deal with public concerns. The NRC does not believe that a "Community Relations Plan" is necessary in order to protect public health and safety, although such a plan could be useful to a licensee for other reasons. Therefore the rule does not address the issue of the need for such a plan. Th rule does, however, require operating and emergency procedures.

Another lesson learned is that the license application should be received early in the process of building an irradiator. The NRC agrees with a need for early notification. The proposed rule would prohibit the start of construction of an irradiator before a license has been issued (§ 36.15)

An issue raised in the report focused on whether WESF capsules should be used in commercial irradiators because cesium-137 chloride is highly soluble in water. The NRC believes that these questions on the "WESF" capsules cannot be resolved until the cause of the leak is better understood. However, as a practical matter, only two irradiators have used "WESF" model capsules in the frequent air-water cycling mode, and neither of these irradiators now use "WESF" capsules. One irradiator still uses the "WESF" capsules in a cycling mode, but the operation of the irradiator is such that the cycling is presently seldom done.

Also of concern was the detection of contamination on workers before they leave the facility. In the RSI accident, some contamination was carried offsite, although the radiation doses involved were low in comparison with NRC's dose limits. Monitoring of workers after a leak has been detected is important. Thus, the proposed rule would require that the licensee have a written emergency procedure for dealing with a leaking source or contamination (§ 36.53(b)) and that the licensee promptly check personnel for radioactive contamination (§ 36.59(d)). Workers would have to be trained in the procedure (§ 36.51(a)(4)).

Another issue dealt with monitoring irradiated product for contamination. In the RSI accident, there was concern that product that had been irradiated after the leak started could be contaminated. The licensee's record system allowed prompt tracking of all recently irradiated product. One shipment that had been shipped earlier in the day on which the leak was detected was found to be contaminated. It was immediately recalled and disposed of as radioactive waste. The lessons learned report recommended adequate monitoring systems for assuring uncontaminated packages, and it perhaps implied that routine monitoring of packages should be done. The NRC believes that there should be a means of promptly detecting leaking sources. The NRC believes that the most suitable way to accomplish this is with frequent monitoring of pool water, and thus the proposed rule contains that requirement (§ 36.59(c)). The NRC agrees that if a leak is detected, all recently irradiated product must promptly be tracked and monitored for contamination. Thus, the proposed rule contains a requirement to monitor irradiated product for contamination if a leak occurs (§ 36.59(d)).

II. Review of Operating Experience

To develop a basis for these proposed safety requirements, the NRC reviewed the operating experience of large irradiators. The information presented in this section is taken, in large part, from "Review of Events at Large, Pool-Type Irradiators," Eugene A. Trager, Jr., NRC Office for Analysis and Evaluation of Operating Data, NRC Report NUREG-1345, 1989. (Copies of NUREG-1345 may be purchased through the U.S. Government Printing Office by calling (202) 275-2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.)

A. Radiation Overexposure

Serious radiation overexposures involving irradiators occurred in the U.S. in 1974 and 1977. Fatalities were caused by radiation overexposures involving irradiators in Italy in 1975, in Norway in 1982, in El Salvador in 1989, and in Israel in 1990.

In 1974, in New Jersey, an operator at a panoramic irradiator walked into the radiation room containing an exposed source, saw it, and quickly left the room. He received a dose large enough to cause clinically observable symptoms of radiation sickness, but the dose was not large enough to be fatal. The entrance to the room lacked the modern automatic access control systems now used and an alarm system had been turned off. The operator did not follow the proper procedures for entry. It is possible the operator was not sufficiently vigilant because he was working alone at a late point in his shift. The operator made the error on the twelfth hour of the fourth straight day in which he worked 10 to 12 hours.

In 1977, a worker at another irradiator in New Jersey was overexposed to radiator after he entered a radiation room while a 500,000-curie (1.8×10^{16}-becquerel) cobalt-60 source was unshielded. The licensee was in the process of modifying the irradiator and was operating the irradiator while the interlocks on the door used to prevent entry into the radiation room were deactivated. In addition, construction activity caused the source-up warning light to be obscured from view. The door to the room was open, and the worker, who assumed the sources were shielded, entered the radiation room. Upon noticing that the sources were in the exposed position, the worker immediately left the room and notified his supervisor. Although not fatal, the worker's dose was calculated by the licensee to be between 150 and 300 rems to the whole body. Subsequent to the accident, the NRC adopted access control requirements (10 CFR 20.203(c)(6)) that required a backup warning system to warn anyone attempting to enter the radiation room while the source is unshielded.

In 1975 an accident occurred in Italy at a 30,000-curie (1.1×10^{15}-becquerel dry-source-storage irradiator used to irradiate corn. An operator claimed onto a conveyor belt to make an adjustment and was carried under the source while it was unshielded. When the operator complained of severe pain in his head, his partner attempted to remove him from beneath the unit. However, his partner ran the conveyor forward rather than in reverse and exposed the operator's entire body to the unshielded source. The operator died 12 days later.

In 1982, an accident occurred in Norway. A maintenance man entered the radiation room of a Category IV irradiator while a 65,000-curie (2.40×10^{15}-becquerel), cobalt-60 source was unshielded, and received a lethal radiation exposure. The facility had two automatic locks on the door to the room to prevent it from being opened while the source was exposed. However, one lock had been previously disconnected because it was malfunctioning, and the other failed due to a broken microswitch. The facility did not meet the requirements in the NRC's current or proposed rule because: (1) Opening the door would not automatically cause the source to become shielded, (2) there was no backup system to automatically cause the source to become shielded upon entry if the primary door or barrier were passed, and (3) there was no alarm system to alert the person entering that the source was exposed. In addition, several NRC operational requirements

were not met. In total, at least six levels of protection in NRC's current and proposed requirements were not provided. (The accident is described in more detail in "The Radiation Accident at Institute for Energy Technology, September, 1982, Some Technical Consideration," Leiv Berteig and Jon Flatby, The Journal of Industrial Irradiation Technology, Volume 2, pages 309–319, 1984.)

In 1989, a fatality resulting from an irradiator exposure occurred in El Salvador. A movable rack holding a 18,000-curie (6.60×10^{14}-becquerel) cobalt-60 source was jammed in an unshielded position. An operator bypassed safety systems and entered the irradiation chamber, along with two helpers, to free the rack and lower the source back into a storage pool. The three workers were exposed to high doses and developed acute radiation syndrome. Although prompt medical attention was effective in countering the acute effects, the legs of two of the men had to be amputated. Six months after the accident, the operator died as a result of radiation-induced lung damaged which was complicated by a lung injury sustained during treatment (summarized from Croft, J., Zuniga-Bello, P., and A. Kenneke, 1989, "The Radiological Accident in San Salvador," IAEA General Conference: Scientific Programme for Nuclear Safety, September 28, 1989.)

In 1990, a fatality occurred in Israel. Product being irradiated jammed on a conveyor system. The jam also prevented the radiation sources from being lowered to the safe shielded position. To clear the jam, the operator entered the radiation room after bypassing the interlocks designed to prevent entry into the room while the sources were exposed. He received a fatal radiation dose within a minute or two.

B. Other Operating Problems

NUREG-1345 identified forty-five events at U.S. irradiators of which forty-four had some actual or potential safety significance. Only two of the events had actual rather than potential impact on the health and safety of the employees or the public. Of the forty-four events, thirty-one involved the failure, malfunction, or degradation in the performance of some irradiator system. These systems include: Access control, source movement mechanism (movement and suspension); source encapsulation; and pool or water cleanup system. An additional ten events stemmed from management deficiencies. Three events involved natural phenomena and other site problems.

1. Access Control

Two radiation overexposures involving access control were discussed in section III.A. and will not be discussed further here. Both events occurred prior to implementation of NRC's current access control regulations in part 20. A third event, reported in 1978, also involved the access control system. It was discovered that failure of two door interlock switches would allow the source to move from the safe storage to the exposed position even if the door to the radiator room was open.

2. Source Movement

There were thirteen events that involved interference with source movement and six other events that involved the source suspension cables.

There were insufficient data to specify a cause for five of the thirteen events in which source movement was impeded. In six of the thirteen events, the product carriers interfered with the movement of the source rack. In one of those, the interference was indirect; a box pusher cylinder created a short in a control circuit resulting in the tripping of a circuit breaker in the control circuit. The source then properly began lowering itself into the shielded position. But loss of the control circuit caused the loss of the source-down position sensor, and so the source cable drum continued to rotate and raised the source to the up position before the motor stalled. The source had to be lowered manually.

There were two source-movement events involving loss of source movement capability that had unique causes. At a research irradiator, interference between an experiment and the source impeded movement of the source. Low temperatures at another irradiator caused freezing that appears to have been responsible for preventing movement of the source.

The thirteen events involving source movement were benign in that no radiation exposures resulted. But two of the events caused fires inside the radiation room. Two events resulted in individual sources coming loose from the source rack. One event resulted in distortion of the source rack.

There were six problems with source suspension cables. In three of the events, the cable broke. In two events, the cable frayed. In one event, the cable came off its pulley. There were no radiation exposures caused by any of these events. In two of the events in which the cable broke, there are indications of some deficiencies in maintenance practices. In one, the cable was known to be frayed; in the other, the cable had not been inspected for at least three years.

3. Source Encapsulation

There have been four events in which the encapsulation of the radioactive sources appears to have failed. As a result, the storage pool was contaminated. In one case, a fire caused by a welder early in the facility life resulted in the discharge of a fire extinguisher into the pool water. Almost immediately afterwards, radioactive contamination of the pool water was detected. The source of the contamination was never established. In a second event, a source was ruptured in 1974 due to mishandling. An excessive contamination level in the pool was not noted until 1982 because the contamination stayed at the bottom of the pool.

Late in 1976, an irradiator licensee determined that the cobalt-60 concentration in the water of a research and development pool was slightly elevated (to 0.0013 microcurie/milliliter or 48 becquerels/milliliter). The licensee stated that the activity level may have been the result of surface contamination from a batch of cobalt-60 sources recently installed in the pool or activity from one source that had a loose cap. Demineralization of the pool water successfully reduced the activity of the pool to normal operational levels. The suspect source was isolated and returned to the supplier.

The previously mentioned 1988 event at RSI involved the leakage of a cesium-137 source. This resulted in the release of about 10 curies (3.7×10^{11} becquerels) of cesium-137 to the pool. The event led to concerns that contaminated products might have been shipped from the plant. Although no contamination was found on products that had been distributed to the public, contamination was found on products that had been shipped to a warehouse and in workers' houses and a car.

4. Pool or Water Cleanup System Integrity

There were three events that involved pool leakage or pool cleanup system leaks. In the case of the leaking pool, the existence of a high rate of water loss from the storage pool was noted by an NRC inspector during an inspection. After discussions with the NRC, the licensee agreed to repair the leak and monitor the rate of pool leakage.

There were two events involving leaks in pool water purification systems. In one event, the piping on the discharge side of the purification system pump

leaked. Contributing factors were that the piping was suitable for cold temperatures while the pool water temperature was 120 °F and that the joints had recently been torqued. The leak developed when the irradiator was shut down for the weekend and there was apparently no low pool level shut-off on the purification pump. In the second event involving a pool purification system leak, a pipe broke. Contaminated water spilled into the facility and some ran out of the building. Small amounts of contamination were later found on the ground outside of the building.

5. Miscellaneous Systems

There were two events that involved miscellaneous systems. The first event involved problems with timers. The second event involved malfunction of pistons used to engage clutches in the product conveyor system.

6. Management Deficiencies

Ten events involved management deficiencies. None of the events caused radiation exposures or radioactive contamination. In one, a dose distribution study that involved the stationary irradiation of paper, a fire resulted from gamma heating of the paper. The most common management deficiency was operating an irradiator without the operable access control interlocks required by 10 CFR 20.203(c). Several events of this type occurred at the same facility.

7. Natural Phenomena

There were three events involving natural phenomena or other site problems. None had any significant impact. One irradiator was struck by a tornado, but the safety of the facility was unaffected. A second irradiator was about 120 km from the epicenter of a series of six earthquakes of about 3.6 magnitude on the Richter scale. The irradiator was inspected by state inspectors and found to be undamaged. In a third event, there was a fire at an irradiator site in a building that was separate from the irradiator building. The building was used to store sawdust. The irradiator suffered no damage.

C. Inspection History

A review of inspection records from January 1, 1980, to December 31, 1987, for current NRC licensees indicates roughly the following types and frequencies of violations of the regulations:

Violations at NRC-Licensed Large Irradiators, 1980–1987

Radiation overexposures	none
Recordkeeping and posting violations	12
Failure to perform tests, inspections, or routine maintenance within required frequency	10
Operating without fully operable interlocks or alarms	6
Failure to calibrate radiation instruments	3
Operator not on authorized list	3
Survey instruments or personnel dosimeters not used or used improperly	3
Repairs or operation without proper authorization	2
Miscellaneous violations	5

The most significant violations are those in which the irradiator was operated without fully operable interlocks or alarms. Interlocks and alarms are an important part of the system of protection used to prevent serious overexposures.

IV. Radiation Protection Philosophy

Based on the review of operating experience, the most important radiation protection objective at a large irradiator is preventing anyone from entering the irradiation room while the source is exposed. An unshielded source at a large irradiator could deliver a lethal does in less than a minute.

The NRC believes that its current access control requirements adequately address this problem. Since imposition of the current requirements in 1978, there have been no reported entries of personnel into an irradiator room while the source was exposed. However, this proposed rule would revise the access control requirements to increase their clarity.

The second most important radiation protection objective is avoiding excessive radiation exposure due to radioactive contamination from leaking, damaged, or contaminated sealed sources. An underlying assumption in this rulemaking is that any sealed source could leak. Therefore, the proposed rule would require means of coping with leaks so that radiation overexposures to facility employees and to the public are avoided.

The first step in avoiding readiation exposures due to contamination is to prevent leaking sources. The proposed rule has clear specific requirements on the encapsulation of sealed sources. Experience with sealed sources manufactured to the standards in the proposed rule has been good. While the proposed rule assumes that any source can leak or be damaged, leaks are rare. When leaks have occurred, the proportion of material in the source that has escaped has generally been low with the exception of a few cases in which cutting tools were mistakenly used to cut sources open.

The second step in preventing excessive radiation exposures requires that a means to detect leakage in a timely manner be provided. For pool irradiators, the proposed rule would require radiation monitoring of pool water. The monitoring should allow prompt detection of any leak of significant size. For dry-source-storage irradiators, the rule would require periodic leak tests of very high sensitivity. Although the monitoring is not as frequent as for wet-source-storage sources, the greater sensitivity should allow detection of any problem early enough.

The third step in preventing excessive radiation exposures is to require a stainless steel pool liner on all new source storage pools to act as a barrier to keep water from leaking out of the pool. The proposed rule contains this requirement.

The fourth step is to have procedures for dealing with accidents or abnormal events. The proposed rule requires the licensee to have those procedures.

Since the proposed rule contains these features, the NRC believes that the requirements in the proposed rule are adequate to assure a very low likelihood that anyone inside or outside the facility would be exposed to radiation in excess of NRC's dose limits in 10 CFR part 20.

V. Reference Documents

The requirements in the proposed rule are based, in part, on recommendations and requirements in the documents listed below:

1. Draft Regulatory Guide FC 403-4, "Guide for the Preparation of Applications for Licenses for the Use of Panoramic Dry Source-Storage Irradiators, Self-Contained Wet Source-Storage Irradiators, and Panoramic Wet Source-Storage Irradiators," January 1985. (Hereafter called the "Irradiator Licensing Guide.") Draft Regulatory Guides may be obtained without cost by writing: Director, Division of Information Support Services, USNRC, Washington, DC 20555.

2. American National Standard N43.10–1984, "Safe Design and Use of Panoramic, Wet Source Storage Gamma Irradiators (Category IV)," National Bureau of Standards Handbook 142, 1984. (Hereafter called the "ANSI Category IV Standard.") This document may be purchased for $8 from: American National Standards Institute, 1430 Broadway, New York, NY 10018.

3. American National Standard N542–1977, "Sealed Radioactive Sources, Classification," National Bureau of Standards Handbook 126, 1978. This document may be purchased from: The

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

4. Draft American National Standard N43.12 (dated October 2, 1985), "Safe Design and Use of Panoramic Dry Source Storage Gamma Irradiators," unpublished. (Hereafter called the "ANSI Category II Standard".) To obtain a copy, write to: Ms. Jayne McCausland, Office of Nuclear Regulatory Research, USNRC, Washington, DC 20555.

5. NUREG-1392, "Leakage of an Irradiator Source—The June 1988 Georgia RSI Incident," February 1990. This document may be purchased from: The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

VI. Public Meeting

Because of the length and complexity of the proposed rule, the NRC will hold a public meeting during the public comment period to discuss the rule. The meeting will be held on February 12 and 13, 1991, in Rockville, Maryland.

The public meeting will provide interested persons an opportunity to question the NRC staff about the meaning, intent, logic, and justification of the proposed rule. The meeting will also allow the NRC staff to question commenters attending the meeting about why they may object to provisions of the proposed rule and how they would suggest improving the rule. Another purpose of these exchanges is to allow commenters to improve their written public comments because, through the meeting, they might gain a better understanding of the meaning, intent, and purpose of the proposed rule. To obtain further information and to register for the public meeting, write or telephone: Ms Jayne McCausland, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3643.

VII. Summary of the Proposed Requirements and the Rationale for Their Inclusion

The actual wording of the proposed amendments appears in the text of the proposed part 36. The information presented in this section summarizes the major requirements by section of the regulation. The bases and origins of the major requirements are also explained.

Subpart A—General Provisions

Section 36.1 Purpose and scope

This section describes the types of irradiators covered in the proposed part 36. The proposed rule covers large panoramic wet-source-storage, dry-source-storage, and underwater irradiators. Large irradiators are those that can deliver a dose of 500 rads (5 grays) or greater in one hour at a distance of 1 meter, either in air or underwater as appropriate for the irradiator type. The dose rate criterion is taken from the access control requirements in the revised 10 CFR 20.3, Definitions, "Very High Radiation Area," under consideration by the Commission. The 1-meter distance effectively excludes self-contained irradiators. A cobalt-60 source of approximately 400 curies (1.48×10^{13} becquerels) would deliver this dose in air if the source were small with little self-absorption. A cesium-137 source would need about 2,000 curies (7.4×10^{13} becquerels) to deliver the same dose. For underwater irradiators, the source activities to deliver a 500-rad (5-gray) dose at 1 meter would be about 10 times larger than if the exposures were performed in air.

Section 36.2 Definitions

This section defines terms that are used in the proposed new part 36.

Subpart B—Specific Licensing Requirements

Section 36.11 Application for a specific license

This section states how to apply for a license and where the application must be sent.

Section 36.13 Specific licenses for large irradiators

This section describes information that must be included in a license application if it is to be approved by the Commission.

The applicant's proposed activities must be for a purpose authorized by the Atomic Energy Act of 1954. This is a standard requirement for all types of licenses.

The applicant's proposed equipment and facilities must be adequate to protect the health of workers and the public and minimize danger to life and property. The applicant must be qualified by training and experience to use the radioactive material for the purpose requested and in a manner that protects health and minimizes danger to life and property. These are standard requirements for all NRC licensees.

The application must describe the training program for irradiator operators. Criteria for acceptable training programs are not contained in the regulations so that flexibility can be allowed. For example, the on-the-job training of operators would be different at a new irradiator compared to an existing irradiator. Guidelines for acceptable training programs are contained in the Irradiator Licensing Guide.

The application must contain an outline of the operating and emergency procedures. The NRC prefers to review an outline that describes the operating and emergency procedures in broad terms that specifically state the radiation protection features to be included in the procedures rather than the detailed operating and emergency procedures. A step-by-step review of procedures would generally not be possible for a license reviewer without intimate knowledge of the construction, layout, and operation of the particular irradiator. In addition, if specific procedures were reviewed, then minor changes that the facility might need to make from time to time (for example, due to replaced equipment or improving procedures based on what is learned from operating experience) could require a time consuming and unnecessary license amendment. This could unnecessarily hamper the safety of facility operation. Detailed procedures would be available to inspectors for reference during facility operation, however, and documentation on changes in procedures will have to be retained for inspection by the NRC for three years (§ 36.81(d)).

The application must describe the responsibilities and authorities of the radiation safety officer and other management personnel. The applicant must also describe the qualifications of the radiation safety officer. These are standard requirements used to judge whether the applicant's personnel are qualified to handle radioactive materials safely.

Consideration was given as to whether the proposed rule should contain specific requirements for the qualifications of the radiation safety officer. Requirements could be placed on: The amount of formal radiation safety training, the amount of on-the-job training, the length and type of previous experience, and the amount of formal education. It was decided not to specify minimum qualifications in the rule because there is so much variability in qualifications among people who would be adequate to do the job. Instead, it was decided that guidance on qualifications should be included in a Regulatory Guide and that the NRC license reviewer should make the final determination of adequacy based on the

actual qualifications of a specific individual. This would allow the license reviewer the flexibility to consider the strengths and weaknesses of a specific individual in making the determination.

Applications to operate panoramic irradiators must contain logic diagrams of access control systems.

Applications also must contain information on how sealed sources would be tested for leakage and contamination.

The applicant must submit information on loading and unloading sources. If the applicant intends to load and unload sources, the applicant must show that its personnel are qualified to do so safely and that its procedures are adequate to protect health and safety. The applicant may also have the loading and unloading done by another organization that the NRC or an Agreement State has approved. "Approved" means that the qualifications of the organization that would do the loading and unloading have been reviewed by the NRC or an Agreement State as part of a prior licensing action and the organization has been found qualified to safely load and unload sources. If the qualifications of the organization have not been previously reviewed, they would then be reviewed as part of the current license application and, if found qualified, added to the list of organizations approved to load and unload sources.

The applicant must also describe the frequency of the operational inspection and maintenance checks required by § 36.36. Guidelines on the frequency of checks may be included in future NRC licensing guides.

Section 36.15 Start of construction

This section prohibits the start of construction of any portion of the permanent facility on the site before a license is issued. The section applies only to new facilities. An applicant is not prevented by this section from seeking a license to operate an irradiator that has been transferred from one owner to another or from converting an existing facility, such as a hot cell, into a irradiator.

Section 36.19 Request for written statements

This section codifies a requirement (found in section 182 of the Atomic Energy Act) that the licensee must supply any additional information required by NRC to assure that health and safety will be protected.

Subpart C—Design and Performance Requirements for the Irradiator

Section 36.21 Design and performance criteria for sealed sources

This section lists the performance criteria for sealed sources used in irradiators.

The performance criteria in the proposed rule are taken from American National Standard N542–1977, "Sealed Radioactive Sources, Classification," published by the National Bureau of Standards in 1978 as NBS Handbook 126. (Available from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.) The NRC has used this standard for many years and generally is satisfied with the performance of the sealed sources that meet the standard. Nonetheless, there is a new requirement that sealed sources installed after the effective date of the rule be doubly encapsulated. Double encapsulation provides additional protection in case one of the welds in the source is defective. The likelihood of two defective welds in one source is less than the likelihood of one weld being defective. Most of the approved sources currently in use are doubly encapsulated.

The proposed rule does not specify any requirements for sealed sources installed prior to the effective date of the rule. Current NRC staff practice is to approve sealed sources on a case-by-case basis, using the criteria in American National Standard N542–1977. Thus, all sources installed prior to that date would have been approved by the staff on a case-by-case basis, using effectively the same criteria as in the proposed rule, with the exception of the requirement for double encapsulation.

Section 36.23 Access control.

This section states requirements for systems intended to prevent entry into the radiation room of a panoramic irradiator while the source is exposed.

The proposed requirements were taken largely from the existing 10 CFR 20.203 (c)(6) and (c)(7), but an attempt has been made to simplify the wording of these requirements. In addition, a requirement that the entrance to the radiation room must have a "door or other physical barrier to prevent inadvertent entry" has been added. Although the present regulation in 10 CFR 20.203(c)(6) does not require a door or barrier, the NRC licensing staff has usually required that a door or barrier be provided. The proposed rule explicitly states the requirement. As a part of the final rulemaking on the new part 36, existing 10 CFR 20.203 (c)(6) and (c)(7), which apply only to large irradiators, will be deleted from part 20 to coincide with the effective date of the part 36 requirements.

For panoramic irradiators, the proposed section would require a primary access control system and an independent backup access control system. In addition, operational requirements for preventing a person from being in the radiation room while the source is exposed are contained in § 36.67, "Entry into and exit from the radiation room."

The door or barrier that serves as the primary access control system must have controls that would: (1) Prevent the source from being moved out of its shielded position if the door or barrier were open and (2) cause the source to return to its shielded position if the door or barrier were opened while the source was exposed.

The backup access control system must be able to detect entry while the source is exposed. If entry is detected, the system must: (1) Automatically cause the source to return to its shielded position and (2) activate audible and visible alarms.

In addition, the proposed rule would require a radiation monitor in the radiation room of panoramic irradiators to detect radiation when the source is indicated to be in the fully shielded position. The radiation monitor would have alarms and an interlock on the personnel access door. This is a new requirement not in the existing § 20.203(c)(6). The purpose is to provide an additional level of protection in case of some failure of the source movement mechanism combined with a failure of the operator to make the required radiation survey upon entry into the radiation room.

The phrase currently used in § 20.203(c)(6) concerning reduction of radiation levels upon entry is worded so that an individual could not receive "a dose in excess of 100 mrem in one hour." This requirement has been changed in § 36.23 to state that the time for the sources to return to the shielded position must be less than or equal to the time that it would take a person entering the radiation room to walk to the edge of the pool (wet-source-storage) or into the beam (dry-source-storage). This wording more directly states the intent of the requirement. If necessary, the licensee could use a time-delay mechanism to delay opening the door after unlocking it.

The access control requirements apply to each entrance of the radiation room of a panoramic irradiator whether intended for personnel access or

intended only for product entrance or exit. Panoramic irradiators with a conveyor system could meet the requirement by providing clearances around the conveyor carriers that are too small to allow someone to pass through. The requirement is that the door or barrier must prevent inadvertent entry. The purpose of this requirement is to prevent a reasonably prudent person from carelessly, inattentively, or accidentally entering the radiation room while the source is exposed.

The access control section would require an independent backup access control system on panoramic irradiators. The backup system could use photo-electric cells in an entrance maze, pressure mats on the floor, or similar means of detecting a person entering the radiation room while the source is exposed. The purpose of the backup system is to provide a redundant means of preventing a person from being accidentally exposed to the source. In case of a failure of the interlocks on the door or barrier combined with a failure to follow operational procedures, the backup system should warn the person entering the radiation room of the danger and automatically cause the sources to return to their shielded position. The system must also alert another person of the entry. That person must be prepared to render or summon assistance. This provision prevents the operation of the panoramic irradiator without a second person being available to render or summon assistance.

The section explicitly states that the irradiator may not operate if the requirements of the section are not met.

This section also contains requirements for underwater irradiators. For example, the pool must be within an area surrounded by a personnel access barrier with an intrusion alarm when the facility is not operating.

Section 36.25 Shielding

This section specifies maximum dose rates outside the radiation room of a panoramic irradiator and maximum does rates over pools. The maximum dose rate of 2 millirems (0.00002 sievert) per hour is considered both practical to achieve and low enough to permit continuous occupancy by workers anywhere outside the shielding. The value was previously specified in the Irradiator Licensing Guide. Two millirems (0.00002 sievert) in an hour is the maximum radiation dose allowed by 10 CFR part 20 in an unrestricted area for one-hour time periods.

For measurements to determine compliance with the requirement, the rule specifies 30 cm as the distance from the shield to the detector. This distance is selected because at that distance the dose would be a whole-body-dose and not a dose occurring in a small crevice or opening. The maximum area of 100 square centimeters for averaging dose effectively establishes a maximum detector size.

The section dose not require that the NRC approve the shield design. Instead the regulations contain only a performance requirement on maximum dose rate outside the shield. The requirements apply to the completed shield.

It is possible that, in its first test, some part of the shield might fail to meet the performance requirement. If this occurs, the effect of the regulation is to require that the shielding deficiency must be corrected before operation of the facility can begin.

The section also specifies maximum radiation dose levels outside the shielding of dry-source-storage irradiators. The levels are considered practical and adequate to maintain doses to workers as low as is reasonably achievable. The levels were specified in the ANSI Category II Standard.

Section 36.27 Fire protection

The heat generated by irradiation can cause combustible materials to catch fire. The requirements in this section are intended to prevent fires, detect fires if they occur, and allow fires to be extinguished without entry of personnel into the radiation room.

The requirements for fire detection and sprinklers or other systems to extinguish a fire at a panoramic irradiator were taken from the ANSI Category IV Standard. The fire extinguishing system does not have to be automatically activated.

Overall, fires are considered to present relatively little hazard to irradiators. Radiation rooms use little combustible material in their construction, and irradiation of highly flammable and explosive materials is prohibited (by § 36.69) without NRC specific approval. The products being irradiated are likely to be combustible, but there is not likely to be present a sufficient quantity of combustible material to result in prolonged high-temperature fires. Thus, the temperature reached is not likely to be high enough to melt or rupture the stainless steel capsules containing the radioactive sources. Therefore, the NRC would not expect a fire to cause loss of encapsulation even if the fire were not controlled and the sources were not dropped into a source-storage pool.

The fire extinguishing system is required because a fire could disable the access control system or could prevent the source from being shielded, thereby lowering the margin of safety. The fire extinguishing system must be operable without entry into the room. During a fire there would be no means of assuring that the access control systems and source position indicators are operating properly. Also, no one could be sure that the mechanism that returns the source to the shielded position had operated properly.

Section 36.29 Radiation monitors

This section requires a radiation monitor to detect radioactive sources on the exiting product. The requirement was taken from 10 CFR 20.203(c)(6)(viii) and from the ANSI Category IV Standard. The purpose of this requirement is to detect sources that have somehow become loose from the source rack and are being carried out with the product and to stop them from being carried out of the radiation room.

This section also requires radiation measurements to detect leaking sources at pool irradiators and a monitor over the pool at underwater irradiators.

Section 36.31 Control of source movement

This section contains the requirements for the control of source movement at a panoramic irradiator. Generally, the requirements are taken from the ANSI Category IV Standard.

Section 36.33 Irradiator pools

This section contains requirements for irradiator pools.

For facilities licensed for the first time after the effective date of the final rule, the proposed rule would require either: (1) A stainless steel pool liner (or a liner metallurgically compatible with other components in the pool), or (2) construction so there is a low likelihood of substantial leakage, a surface designed to facilitate decontamination, and a means to safely store sources during repairs of pool walls. Back-fitting is not required because modifying an existing pool would be prohibitively expensive and the gain in safety would be only marginal. Older facilities sometimes used concrete pools, sometimes lined with tiles, but usually without stainless steel liners or other ways to reduce the likelihood of leakage. The ANSI Category IV Standard does not require pool liners. However, unlined pools have leaked from time to time. The purpose of the requirement is to reduce the likelihood of pool leakage. It is desirable to control pool leakage in case the pool water becomes contaminated due to a leaking

source. If the pool were leaking and a source leaked at the same time, a potential for worker and public exposure would exist, and it could be difficult and expensive to decontaminate the facility.

The NRC considered whether to require that pools have a more sensitive means of detecting water leakage from pools than monitoring water loss. Examples of more sensitive means might be a double lined pool or channels at welds with a means to detect water leaking from the pool. The NRC decided that it would be adequate to monitor pool water loss and unnecessary to have a more sensitive means of detecting leaks. There are two reasons for wanting to avoid leaks. One reason is that a substantial lowering of the pool water level would cause radiation levels at the pool surface to increase. The increased radiation levels are not a safety concern unless large volumes of water are lost. A system to monitor water loss could easily detect leaks before a safety hazard would result. The second reason to avoid leaks is to prevent the escape of radioactive material that might be in the pool water. In normal circumstances a pool leak is not a safety concern because pool water contains little or no radioactive material. If a source leak occurred while the pool had a small undetected leak, some contaminated water could escape from the pool. Experience has shown that pool contamination levels do not get very high so that the escape of a small amount of pool water into the ground is not a significant safety concern. Therefore the NRC does not consider that a pool leak system more sensitive than that required in the proposed rule is necessary.

The proposed rule would require both a means to replenish water that is lost and a low-water level indicator. The means to replenish the water does not have to be automatic. An indicator is needed even if the replenishment is automatic in case the system to replenish the water does not work. The requirement for a cover or railing to prevent workers from falling into the pool is taken from the ANSI Category IV Standard.

The proposed rule requires a water purification system. The purposes of the purification system are to prevent the pool water from becoming cloudy and reducing visibility and from becoming corrosive and thus corroding the stainless steel sealed sources or the source rack. If the water is clear, it should be possible to visually inspect the sources and the source rack. Thus, the sources and the source rack could be inspected for damage, and the location of the sources could be checked to make sure they are in their proper positions.

Requirements on the design of poles and long-handled tools to be used in irradiator pools would be imposed to prevent radiation "streaming." Hollow and low density poles and tools must have either vent holes to allow shielding water to enter or sufficient bends to prevent radiation levels at handling areas of the tools from exceeding 2 millirems (0.00002 sievert) per hour.

Section 36.35 Source rack protection

This section would require a barrier to prevent the moving products from hitting the source rack or the mechanism that raises and lowers the sources.

Section 36.37 Power failures

This section would require automatic source retraction for loss of power for more than 10 seconds at a panoramic irradiator. The retraction would have to be accomplished without outside power. Backup power is not required as long as loss of power will cause the source to return to its shielded position, for example, if the source would return to the shielded position due to gravity. The requirement is taken from the ANSI Category IV Standard.

Section 36.39 Design requirements

This section describes facility design requirements. The purpose of the requirements is to make sure the design is adequate before construction starts.

Included in the section is a requirement that all irradiators must have shielding walls constructed of reinforced concrete designed to meet generally accepted building code requirements for reinforced concrete. This provides protection against moderate earthquakes, tornadoes, and other hazards.

In addition, irradiators built in seismic areas must have radiation shields designed to retain their integrity in an earthquake. Seismic areas are defined in § 36.2 as any area where the probability of a horizontal acceleration in rock exceeding 0.3 times the acceleration of gravity in 250 years is greater than 10 percent. The value of 0.3 comes from the ANSI Category IV Standard. The 250-year frequency is different from the frequency in the standard, which specifies a 50-year frequency. The NRC selected 250 years to include areas that could have a large earthquake even if large earthquakes would seldom occur.

Maps of the United States showing these seismic areas are published by the U.S. Geological Survey (see S. T. Algermissen, et al., "Probabilistic Estimates of Maximum Acceleration and Velocity in Rock in the Contiguous United States," United States Department of the Interior, Geological Survey, Open-File Report 82–1033, 1982. This report may be purchased for $24.50 from: U.S. Geological Survey, Books and Report Sales, Box 25425, Denver, Colorado 80224. Prepayment is required).

Studies of irradiator shield designs have shown that the shields are inherently able to withstand large earthquakes. ANSI determined that reinforced concrete shields constructed to meet generally accepted building code requirements for reinforced concrete (for example ACI Standard 318–77, "Building Code Requirements for Reinforced Concrete," available for purchase from the American Concrete Institute, Box 19150, Redford Station, Detroit, Michigan 48219) can withstand an earthquake with an acceleration in rock of 0.3 times the acceleration of gravity plus any mulitplication of acceleration that would occur due to soil. Therefore, there are no seismic requirements for irradiators located where accelerations in rock are not likely to exceed 0.3 times the acceleration of gravity.

The proposed rule would intend that shield walls in seismic areas would have to retain their integrity in the event of an earthquake by requiring that they be designed to meet the seismic requirements of local building codes or other appropriate sources. Local building codes in seismic areas are likely to specify requirements for things such as: spacing of reinforcing bars; how to tie reinforcing bars together; preferred arrangements of reinforcing bars; and requirements for joining reinforcing bars to floor slabs. If local building codes do not contain seismic requirements, "other appropriate sources" could include: American Concrete Institute Standard ACI 318, "Building Code Requirements for Reinforced Concrete, Appendix A, Special Provisions for Seismic Design," (available for purchase from the American Concrete Institute, Box 19150, Redford Station, Detroit, Michigan 48219). The NRC solicits comments, in particular, on this requirement.

The NRC also considered whether there should be design requirements for shield integrity against tornadoes. The NRC decided that there was no need for special design requirements because the shielding by its very nature (about six feet thick reinforced concrete) is inherently resistant to tornadoes.

Section 36.41 Construction control

This section describes checks that the licensee must make before sources are

loaded to be sure the facility was constructed as designed and that alarms, controls, interlocks, and instruments operate properly.

Subpart D—Operation of the Irradiator

Section 36.51 Training

This section contains safety training requirements for irradiator operators. The emphasis is on practical knowledge directly necessary for the job rather than theoretical principles.

The subjects that an irradiator operator must be trained in are:

(1) The fundamentals of radiation protection as they apply to irradiators. The goal here is to provide the individual with the necessary foundation to perform his or her task safely and to help the individual worker understand the basis for the safety requirements and procedures that will be taught.

(2) The requirements of parts 19 and 36 of NRC regulations. The operator is not expected to be an expert on NRC regulations or to be able to determine whether a given procedure is adequate to meet NRC regulations. Instead, operators should be instructed on NRC requirments that are directly applicable to their responsibilities.

(3) The operation of the irradiator. The objective is not to make the individual an engineer, but to help the person understand the operating and emergency procedures.

(4) Licensee operating and emergency procedures that the individual will perform. This is the most important part of the training because the safe operation of the irradiator depends on the procedures being followed correctly. The objective is that the operator be able to correctly perform the procedures that he will be expected to perform. The training does not have to include procedures that the individual will not perform. For example, if the individual will not perform leak tests, the individual need not be trained in the procedure.

(5) Case histories of accidents and problems involving irradiators similar to those to be used by the individual. The individual should be taught about situations that could lead to trouble. Instruction material on accidents is often difficult to obtain. However, the previously mentioned NRC Report NUREG–1345, "Review of Events at Large Pool-Type Irradiators," should provide some relevant information.

In order to provide flexibility, the proposed rule intentionally does not specify how many hours of classroom training and on-the-job training are necessary to become an irradiator operator. A license applicant would describe the training program in its license application. The Irradiator Licensing Guide suggests 40 hours of classroom training and one month of on-the-job training.

The proposed rule also does not specify the training or qualifications needed by the radiation safety officer. This is also to allow flexibility. The license applicant would describe the minimum training, experience and qualifications of the radiation safety officer in its license application. A review would then be conducted on a case-by-case basis. The Irradiator Licensing guide suggests guidelines for basic radiation protection training and on-the-job training for the radiation safety officer.

The NRC considered whether the proposed regulation should include training requirements for other types of workers such as package handlers and maintenance workers. The NRC concluded that the general training requirements specified in § 19.12, "Instructions to workers," are suitable for other types of workers, and therefore additional or more specific requirements are not necessary.

Section 36.53 Operating and emergency procedures

This section lists the specific operating and emergency procedures that a licensee must have. The section also lists requirements for changing these procedures. Operators must be instructed in a changed procedure before it may be put into use. Changes in procedures that do not reduce the safety of the facility and are consistent with the outline submitted in the license application do not have to be approved by NRC nor must changed procedures of this type be reported to NRC. However, documentation on the changes must be retained for inspection by NRC (§ 36.81(d)).

Section 36.55 Personnel monitoring

This section contains the personnel monitoring requirements for irradiator operators and other people entering the radiation room of a panoramic irradiator.

It could be argued that this section is not needed because the requirements in § 20.202, "Personnel monitoring," are adequate for irradiators. Section 20.202 requires personnel dosimeters for anyone likely to receive in excess of 25 percent of an applicable dose limit. At irradiators, as currently designed and operated, no operator is likely to exceed 25 percent of a dose limit. Therefore, § 20.202 does not require any use of dosimeters at irradiators. Nevertheless, the NRC wants operators to use dosimeters so that there is a dose measurement in case someone enters the radiation room while the source is exposed, even though entry is not likely. Therefore, NRC considers it desirable to impose dosimeter requirements in excess of those in § 20.202.

Film badges and thermoluminescent dosimeters (TLDs) must be suitable for detecting high energy photons in the normal and accident dose ranges. Paragraph (c) of § 20.202, "Personnel monitoring," requires that film badges and TLDs must be processed by an accredited processor for the types of radiation that would be encountered. For irradiators, the radiation type is high energy photons in both the normal and accident dose ranges. In the "American National Standard for Dosimetry-Personnel Dosimetry Performance—Criteria for Testing," ANSI N13.11–1983, the normal dose range is 0.03 to 10 rems (0.0003 to 0.1 sievert) and the accident dose range is 10 to 500 rads (0.1 to 5 grays).

Pocket dosimeters, which could be worn by people other than operators, need not be calibrated because their purpose is primarily to indicate either no dose or a very large (but not quantitatively measured) dose.

Section 36.57 Radiation surveys

This section lists the radiation surveys that must be done and specifies how often they must be done.

An annual survey instrument calibration is in accordance with the recommendations of American National Standard N323–1978, "Radiation Protection Instrumentation Test and Calibration." Modern survey meters are considered reliable and stable, making more frequent calibrations unnecessary.

The accuracy requirement for survey meter calibration is ±20 percent. In the past, the NRC has specified accuracy requirements of ±10 percent for some uses and ±20 percent for other uses. Modern survey meters can fairly easily be calibrated to be accurate to ±percent on all scales over their entire range of dose rates. On the other hand, calibrations to ±10 percent are often difficult to obtain and sometimes require the use of calibration charts for correcting the meter reading. The charts make the survey meter more complicated to use and increase the likelihood of errors in reading the meter. In determining the accuracy requirement for survey meter calibration, the key question, therefore, is when is an accuracy of ±10 percent needed, and when is an accuracy of ±20 percent adequate to accomplish the purposes of

the measurement? The discussion below answers this question.

At an irradiator, the most important and frequent use of the radiation survey meter is to confirm that the source is shielded when entry into the radiation room is made. The survey meter is used to determine whether dose rates in the entrance maze are the normally-occurring very low dose rates or are many times higher than normal. For this purpose, a survey meter accurate to ±20 percent is acceptable.

Another use of the survey meter is to verify that the dose rates outside the shielding wall at the restricted area boundary are in compliance with NRC limits. These measurements are done infrequently. The most important purpose of these measurements is to check that the shielding contains no voids or poorly designed penetrations. Another purpose is to verify that limits on dose rates are not exceeded. A quantitative measurement is needed rather than a qualitative yes/no indication to verify that dose rate limits are not exceeded. However, at most facilities it has been found that the actual dose rates outside shield walls and at restricted area boundaries are far below the regulatory limits. Therefore, a highly accurate quantitative measurement is not normally needed. Accuracy of ±20 percent is normally adequate to verify compliance.

It is possible that a measured dose rate might be very close to a limit. In those special situations, the licensee might need a measurement more accurate than ±20 percent. Thus, the accuracy requirement of ±20 percent in the regulations does not mean that the licensee would never need a measurement more accurate than ±20 percent. Rather, the regulation means that the ordinary routine periodic calibration need only be within ±20 percent. Most facilities would never need a more accurate calibration, but others at some time might.

In summary, the NRC position on survey meter calibration is that accuracy of ±20 percent is adequate for most routine measurements around irradiators and, therefore, adequate for routine gamma survey meter calibration. On the other hand, certain special measurements may require more accuracy to demonstrate compliance with regulatory limits. Thus, in special instances at specific parts of the dose rate range and for specific gamma ray energies, more accuracy may be required. Those calibrations would be done specifically for the measurement to be made (dose rate range, gamma energy, and geometry).

Very high range survey meters (those that could measure dose rates in the radiation room while the source is exposed) are not required because the NRC could not see a need for this type of measurement. Normal range survey meters are adequate to determine whether sources are fully shielded. Radiation rooms should not be entered if the sources are known to be exposed.

Section 36.57 also requires that deionizing resins be monitored for radioactivity before release to unrestricted areas. The NRC considered prohibiting the return of deionizing resins to suppliers for recycling. Irradiator sources could have small amounts of radioactive contamination on their surfaces due to manufacturing processes. Some of this contamination could be collected in the resins. Thus, even resins that have no detectable radioactivity could contain small amounts of radioactivity. If mixed with other resins, the dilution would be that much larger. Thus, concentrations in the waste stream from regeneration, if any, would be far below the 10 CFR part 20, appendix B, effluent limits.

An approach to monitoring very low quantities using survey instruments has been used for medical waste (see Regulatory Guide 10.8, "Guide for the Preparation of Applications for Medical Use Programs," Appendix R). Calculations of dose rates show that concentrations of radioactivity in resins would have to be below a small fraction of the effluent limits for water in 10 CFR part 20, Appendix B. If the resins were regenerated, the amount of backwash solution that would remove the radioactive material from the resins would dilute the concentration of the material by at least a factor of 20, based on the volumes of water used in regeneration. Thus, the proposed requirement, instead of prohibiting the return of resins, is that resins must be monitored before release in an area with a background radiation level less than 0.05 millirem (0.0005 millisievert) per hour. Radiation levels must not be detectable above background radiation levels. The survey meter must be capable of detecting radiation levels of 0.05 millirem (0.0005 millisievert) per hour. Most G.M. survey meters would be adequate. The Commission considers this approach adequate to protect public health and safety.

Section 36.59 Detection of leaking or contaminated sources

This section describes how and when leak testing of sealed sources must be done. There are different requirements for dry-source-storage and wet-source-storage sources.

U.S. Department of Transportation regulations require that all sources, dry-storage and wet-storage, be individually leak tested in order to be shipped. Leak tests are normally done by the manufacturer. The licensee must obtain a certification from the manufacturer indicating that the leak testing has been done.

The requirements for dry-source-storage sources are similar to those contained in the second proposed Revision 1 to Regulatory Guide 10.9, "Guide for the Preparation of Applications for Licenses for the Use of Self-Contained Dry Source—Storage Irradiators."

A level of 0.005 microcurie (185 becquerels) on a dry wipe is the level of contamination considered to indicate a leaking or contaminated source. Traditionally the level for irradiator sources has been 0.05 microcurie (1850 becquerels), and that value is used in the Irradiator Licensing Guide and the ANSI Category IV Standard. The reason for the change is that previous manufacturing processes caused considerable surface contamination and irradiator sources could not be cleaned to below 0.05 microcurie (1850 becquerels). Also, detection of quantities below 0.05 microcurie (1850 becquerels) was difficult. However, source manufacturing techniques have improved so that sources are now cleaner and have less surface contamination, and instruments have improved so it is possible to detect 0.005 microcurie (185 becquerels) of activity. Thus, the NRC believes it is now practical to meet a contamination level of 0.005 microcurie (185 becquerels).

The 0.005-microcurie (185-becquerel) quantity serves to alert the licensee that there might be a problem. Detection of 0.005 microcurie (185 becquerels) shows a need for further evaluation. The quantity is not justified on specific assumptions of risk. It is a sufficiently small quantity that it presents very low levels of risk, but it is measurable. It is not used in the regulatory program or by industry as a limit on allowable leakage rate. If any leakage is discovered, the source should be removed from service. Further, although termed a "leak test," the usual test performed by users of sealed sources is a "contamination test." A positive indication does not necessarily indicate leakage. It could indicate surface contamination deposited during the manufacturing process.

Leak testing of sources used in pools cannot be done by wipe-testing the sources. The proposed rule would require that radioactive contamination

be monitored each day the irradiator operates either by on-line monitoring of a pool water circulating system or by analysis of pool water. If on-line monitoring is used, detection of above normal radiation would have to automatically cause the water purification system to shut off. The purpose of the shut off is to prevent high radiation dose rates in the water purification system.

The NRC also considered whether water purification systems should be shielded. The NRC believes that high dose rates might be a possibility if flow were not shut off, but does not believe that the normal water purification systems are always appropriate for cleaning up a leak if the leak were large. For a large leak, special equipment might be more suitable. Therefore, the rule requires a shut off of the system if a high radiation level is detected rather than requiring shielding. If emergency procedures allow the normal water purification system to be used, temporary shielding appropriate for the specific situation could be used as specified in the emergency procedures.

Section 36.61(a)(3) requires a check of the operability of the radiation monitor on the pool water purification system with a radiation check source. The monitor is used to detect radiation levels that are above normal rather than to make quantitative measurements of doses. For this purpose simple operability checks are appropriate.

Section 36.61 Operational inspection and maintenance

Operational inspection and maintenance includes the items that the licensee must periodically check to assure proper operation of the facility. The frequency of checks is not stated in the regulations because the frequency will be site-specific depending on the design of the facility. The frequency of checks must be described in the license application, as required in § 36.13(h).

The NRC considered whether the frequency of checks on the access control system, probably the most important safety feature of an irradiator, should be specified in the regulations. The NRC concluded that there is too much variation in irradiator design and operation to specify a frequency that would apply in all cases. Therefore the NRC decided that the applicant should propose a frequency in the license application. This approach allows flexibility and at the same time allows the NRC to approve a frequency of checks that it considers adequate for a specific facility. Guidance of criteria for generally applicable frequencies for checks will be offered in a regulatory guide.

Section 36.63 Pool water purity

This section would require that the water purification systems in irradiator pools be run each day the irradiator operates or at least monthly during shutdowns. Purification systems do not have to be run continuously and do not have to be run the entire time the irradiator operates, although many licensees may have to run the system continuously to maintain pool water conductivity near 10 microsiemens (micromhos) conductivity. If water conductivity exceeds 10 microsiemens (micromhos) per centimeter, the system must be run until the water conductivity is below 10 microsiemens (micromhos). The purpose of maintaining clean water is to reduce corrosion of the sources and to keep the water clear. Clear water is desirable so that the sources and source rack can be inspected visually to check their condition. The NRC considers conductivity to be the best method of checking the purity of the water in irradiator pools.

With regard to corrosion, the operating environment is as follows: The sealed sources used in irradiators are most commonly clad in 316L stainless steel. Sometimes 321 stainless steel is used. While in the pool, the temperatures of the sources are generally 80 to 90°F. In air the temeprature of the sources can run as high as 300 to 400°F. The sources used with conveyor systems are typically cycled in and out of the water several times a day but sometimes more often. Batch irradiation sources may be cycled several dozen times a day.

Under these circumstances, generalized surface corrosion should be minimal and not of concern. The type of corrosion of potential concern might be chloride-induced stress corrosion cracking. Although inspection of sources that have been used in irradiators for long periods have revealed virtually no chloride-induced stress corrosion cracking, it is desirable as a precaution to operate the sources in a relatively low corrosion environment. Maintaining water conductivity over the long term in the vicinity of 10 microsiemens (micromhos) per centimeter should provide a low corrosion environment, although considerably higher levels could be tolerated for fairly long times with no threat to safety. Comments on this approach to water purity are specifically requested.

Section 36.65 Attendance during operation

This section describes how an irradiator must be attended during operation.

Section 36.67 Entering and leaving the radiation room

This section describes the requirements for first entering the radiation room of a panoramic irradiator after an irradiation and for leaving the radiation room and locking it up before an irradiation. It also covers entry to the pool area of an underwater irradiator during a power failure.

Section 36.69 Irradiation of explosive or highly flammable materials

The proposed rule would prohibit the irradiation of explosive materials or more than traces of highly flammable materials unless the licensee has prior written authorization from the NRC. The reason for these prohibitions is that irradiation can cause chemical reactions that would cause a fire or explosion of highly flammable or explosive materials.

Highly flammable materials are those with a flash point temperature below 140°F. The flash point of 140°F was taken from the ANSI Category IV Standard. The flash point is the lowest temperature at which a substance will volatilize to yield sufficient vapor to form a flammable gaseous mixture with air, demonstrable through the production of a flash on contact with a small open flame. The flash points of common substances are tabulated in various engineering handbooks and manuals, for example, "Accident Prevention Manual for Industrial Operations," National Safety Council, Chicago, 1974, and "Handbook of Laboratory Safety," Second edition, Chemical Rubber Company, 1971. Examples of common flammable materials with a flash point below 140°F are: acetone, benzene, most alcohols, number two fuel oil, gasoline, kerosene, toluene, most alcohols, number two fuel oil, gasoline, kerosene, toluene, turpentine, and any flammable gas.

Subpart E—Records and Reports

Section 36.81 Records and retention periods

The records that a licensee must maintain and their retention periods are specified in a single section, § 36.81, for ease in implementation. Thus, the licensee has a convenient "check list" to use to make sure that all records required by part 36 are kept.

The purpose of requiring the licensee to maintain an inventory of all sources

possessed is to assure that the licensee is able to account for all sources in its possession. The activity of the sources is the activity when they were received. There is no safety need to correct for radio-active decay. Decay corrections would greatly complicate record keeping without contributing to the objective of the requirement, which is that the licensee be able to account for each of the sources that it received.

Sections 36.83 Reports.

This section lists all reports that are required by part 36. All reports required by part 36 are included in a single section for ease of use by licensees.

Paragraph (a) requires reports on lost or stolen sources, radiation overexposures, excessive levels or concentrations of radiation, and damage to or loss of the activity to operate the facility due to events involving radioactive material. The paragraph references the event reporting requirements of part 20. The NRC is currently considering changes in the part 20 reporting requirements. If part 20 is amended, corresponding changes would be made in the part 36 reporting requirements.

Paragraph (b) requires reports to individuals on radiation exposure as required by part 19. This paragraph likewise places no new or different reporting requirements on licensees.

Paragraph (c) requires reports on leaking sources. The requirement is similar to the requirement now generally imposed under a license condition. The reporting period would be 5 days from the time of discovering the leak of allow for completeness in the reports, especially with regard to corrective actions.

Paragraph (d) requires reports within 5 days of other events with possible safety significance if not reported under paragraphs (a), (b), or (c) even though they may involve no violations of the regulations or license conditions. The purpose of the reports is to make NRC aware of problems that should be reported to other licensees because of their safety significance.

The 5-day reporting period in paragraphs (c) and (d) represents a balance between allowing sufficient time to collect, analyze, and writeup the necessary information and requiring that the report be submitted before recall of events fades.

Reports submitted generally would be subject to public disclosure in accordance with 10 CFR 2.790 and 10 CFR part 9. The NRC was asked at a 1988 public meeting on irradiator safety whether proprietary information could be withheld from public disclosure. The NRC notes that 10 CFR 2.790 allows the NRC to withhold certain proprietary information (information of commercial value or "trade secrets") if, at the time of submittal of the report, the requirements for withholding the information are met (refer to 10 CFR 2.790(b)). Also, there are provisions in 10 CFR part 9 for the NRC to withold from public disclosure documents such as reports of radiation exposure to individuals and other personal records.

Subpart F—Enforcement

Section 36.91 Violations

This section is provided to inform licensees and the public that violations of the regulations may result in civil or criminal penalties.

VIII. Other Considerations

Certain other issues that were considered, including some that did not result in a requirement in the proposed rule, are discussed here.

A. Siting, Zoning, Land Use, and Building Code Requirements

The NRC recognizes that most areas have zoning, land use, and building code requirements that would be applicable to irradiators. It is the responsibility of the applicant or licensee to assure that any proposed facility meets the zoning, land use, and building code requirements of the local and State governments having jurisdiction over the intended site. The NRC is not responsible for checking or assuring that State and local requirements have been met. The granting of an NRC license does not negate applicable local zoning, land use, or building requirements.

As a practical matter, this means that in order to meet State and local requirements, irradiators must be built in areas zoned for industrial facilities and not in residential areas. The applicant is advised to consult with the State and local governments before starting construction to assure that the facility would meet all State and local siting, zoning, and land use requirements. The NRC believes that an irradiator meeting the requirements in the new Part 36 would present no greater hazard or nuisance to its neighbors than other industrial facilities, because there is little liklihood of such an irradiator causing radiation exposures offsite in excess of NRC's part 20 limits for unrestricted areas. Therefore, the NRC believes that, in general, irradiators can be located anywhere that local governments would permit an industrial facility to be built.

The NRC considered whether there should be siting requirements dealing with possible flooding of the irradiator or tidal waves. The NRC decided that no siting requirements with respect to possible flooding or tidal waves were necessary because flooding of the facility would not destroy the integrity of the shielding walls. Section 36.39 contains a requirement that shielding walls of panoramic irradiators must be constructed of reinforced concrete designed to meet generally accepted building code requirements for reinforced concrete. With this type of construction, shielding and sources are well protected from being carried off in a flood or wave or damaged due to a flood or wave. Flooding of the facility would undoubtedly result in the need for a time-consuming and expensive repair of flood damage, but no particular radiation hazard would be involved during repair of flood damage because sources could be safely stored during the repairs. However, the proposed rule does include a requirement to have emergency procedures for coping with natural phenomena such as floods.

The NRC also considered whether seismic zones should be considered in siting requirements. The NRC decided that irradiators could be built in any area of the country, but that irradiators in seismic areas (as defined in § 36.2) would need shielding walls designed to withstand an earthquake.

If an irradiator were subject to a large earthquake, the potential damage of radiological significance would be to the integrity of its concrete shielding. Analyses of reinforced concrete irradiator shields designed to meet generally accepted building code requirements for reinforced concrete have shown they are inherently quite robust and resistant to damage from modern-size earthquakes. To protect against large earthquakes, the NRC decided to include requirements that radiation shields in seismic areas be designed to retain their integrity after a large earthquake. Also, all irradiators must have an emergency procedure for earthquakes.

B. Use of Cesium Sources

The two radionuclides generally used in gamma irradiators are cobalt-60 and cesium-137. Cobalt-60 is in the form of solid metal pellets that are relatively insoluble in water. Cesium-137, on the other hand, is generally encapsulated as a salt, cesium chloride, that is fairly soluble in water. Therefore, cesium-137 could be more disperible than coblat-60 is the sealed source leaked or was damaged. The question considered is should use of cesium-137 sources be

permitted at all or permitted only with certain additional restrictions?

In 1988, a cesium-137 source at the RSI irradiator in Decatur, Georgia, leaked. No radiation exposures in excess of NRC's limits occurred, but the leak raised a question about the integrity of cesium-137 sources. As of July 1990, the cause of the leak is not known and is still being actively investigated. The NRC intends to reevaluate whether cesium-137 sources or sealed sources containing readily soluble or dispersible material are suitable for continued, long term use in irradiators. The Commission specifically seeks public comment on this matter.

C. Seismic Detection and Resistance

As a related issue to siting, NRC considered requirements for a seismic detector whose activation automatically causes the source to return to its fully shielded position. Such a requirement is contained in the ANSI Category IV Standard and is general practice. However, the detectors and source return mechanism would not improve the safety of large irradiators because shield walls must be designed to provide adequate shielding to protect workers and the general public in the event of a seismic event. Therefore, NRC concluded that such a requirement is not necessary to protect the public health and safety. Public comment is specifically requested on the need for a seismic detector and automatic source return mechanism.

D. Decommissioning

The NRC considered whether special design requirements were needed to facilitate decommissioning of the facility. The NRC concluded that the requirements in the proposed rule are adequate to facilitate decommissioning. Normally, decommissioning is relatively simple, because there would be no radioactive contamination present in the facility. However, contamination could be present if leakage of the sources did occur. If leakage from sources did occur the periodic leak tests of dry-storage sources and monitoring of the pool water should allow early detection of the leakage before large amounts of material have leaked out. With early detection of leakage, a leaking source could be identified and isolated and pool cleanup would purfiy the water, removing contamination from the water. Thus, even if a leak occurred, there is little likelihood that contamination would reach high levels. In addition, the pool walls should prevent contamination from leaking out of the pool if contamination occurred. The pool must also have a liner or a surface relatively easy to decontaminate. Thus, an irradiator designed, licensed, and operated in accordance with the proposed rule should facilitate decontamination.

The subjects of financial assurance and recordkeeping for decommissioning are adequately dealt with in another section of the regulations (10 CFR 30.35) and thus are not included in part 36.

E. Drop of Source Rack

The NRC considered whether the drop of a source rack in the pool, caused by cable failure for example, might damage the sealed sources. Cobalt-60 sources are fairly light. Thus, in a drop the source rack would drop relatively slowly through the water and hit the pool bottom with little momentum. Cobalt-60 source racks are also generally designed with plates to slow the rate of descent. Thus, the sources are unlikely to be damaged as a result of a drop. Cesium-137 sources, on the other hand, are relatively heavy so that damage to a source as the result of a drop might be more likely.

However, in either case it was decided that it would be appropriate to analyze the consequences of a source rack drop and design the facility to prevent damage to the sources from a source rack drop. Therefore, the requirements on design include a requirement to analyze source rack drops and to design irradiators to prevent damage to the sealed sources.

F. Aircraft Crashes

The NRC considered whether there should be a prohibition from locating irradiators near airports because of risk of an irradiator release associated with an airplane crash. The NRC has concluded that a prohibition is not justified on safety grounds. The radioactive sources in an irradiator would be relatively protected from damage because they are typically contained within six-foot thick reinforced-concrete walls and are encapsulated in steel. However, if a source were demaged as a result of an airplane crash, large quantities of radioactivity are unlikely to be spread from the immediate vicinity of the source rack because the sources are not volatile. Since the radiological consequences of an airplane crash at an irradiator are not likely to be life-threatening, the radio-logical consequences are relatively unimportant compared to loss of life directly due to the crash itself. Thus, the presence of radioactive sources does not substantially change the probable consequences of an airplance crash. Therefore, NRC will allow the construction of an irradiator at any location at which local authorities would allow any type of industrial facility to be placed.

G. Pool Water Coolers

The NRC considered whether pool water coolers should be required. Pool water coolers would lower water temperatures, reduce evaporation, and thus reduce humidity in the air of the radiation room. Lower humidities might result in somewhat less potential for corrosion of safety interlocks, product conveyor systems, and source raising and lowering mechanisms.

The NRC has decided not to require pool water coolers because there are many ways to avoid problems with high humidity and many smaller large irradiators do not have humidity problems. In addition, licensees would be required to maintain the facility to ensure compliance with the requirements of § 36.61 regardless of potential problems associated with high humidity.

H. Noxious Gas Control

Large irradiators can produce ozone in concentrations exceeding those permitted by regulations of the Occupational Safety and Health Administration (OSHA) at 29 CFR 1910.1000, "Air Contaminants." Nitrogen oxides can also be produced although concentrations would not be expected to exceed OSHA's limits. To control these noxious gases, most radiation rooms are equipped with ventilation systems to exhaust the gases before personnel entry.

The NRC notes that OSHA regulates exposure to ozone and other noxious gases. However, if NRC personnel anticipate a problem during licensing or note a problem with ozone at an irradiator during inspection, the NRC will notify OSHA of the problem under the terms of a "Memorandum of Understanding Between the Nuclear Regulatory Commission and the Occupational Safety and Health Administration; Worker Protection at NRC-Licensed Facilities," (53 FR 43590; October 31, 1988).

I. Issuance of a Regulatory Guide

The NRC plans to develop a regulatory guide that will set forth the information that an irradiator license applicant should provide in its license application. Development of the guide will begin after public comments on the proposed rule have been reviewed. NRC intends to issue the guide in draft form for public comment before the final irradiator rule becomes effective. The

guide would replace the draft irradiator licensing guide now is use.

IX. Agreement State Compatibility

The rule will be a matter of compatibility between the NRC and the Agreement States, thereby providing consistency between Federal and State safety requirements. With regard to basic radiation standards and definitions, as found in 10 CFR part 20, which have been identified as strict matters of compatibility with respect to Agreement State regulations, in this area the Agreement States are expected to adopt essentially an identical standard. However, this rule, while being a matter of compatibility between the NRC and the Agreement States, is assigned a level of compatibility which would allow the Agreement States to adopt additional requirements based on local concerns or experience.

X. Finding of No Significant Environmental Impact: Availability

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 impact statement is not required. The proposed action codifies in a rule the licensing requirements and policies on large irradiators. The proposed action is directed to improving the regulatory, licensing, inspection, and enforcement framework relating to these irradiators and will not affect the quality of the human environment. 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 NW. (Lower Level), Washington, DC. Single copies are available without charge upon written request from NRC Distribution Section, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

XI. Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of these requirements.

Public reporting burden for this collection of information is estimated to average 750 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–), Management and Budget, Washington, DC 20503.

XII. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis compares the costs and benefits of the requirements in the rule with current licensing requirements. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained without charge upon written request from: Distribution Section, Office of Information Resources Management, USNRC, Washington, DC 20555. Comments on the analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

XIII. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities.

Currently, there are roughly 70 to 80 irradiators that are large irradiators, as defined by the proposed rule. Of those irradiators, there are currently 39 irradiators in the U.S. with sources greater than 250,000 curies (9×10^{15} becquerels) up to a maximum of 30,000,000 curies (1.1×10^{18} becquerels). Fifteen are licensed by NRC; 24 are licensed by Agreement States. Five additional irradiators are either under construction or proposed for construction in Agreement States. In addition, the NRC licenses 10 irradiators with sources smaller than 250,000 curies (9.25×10^{15} becquerels) that would be subject to the rule. The Agreement States probably have about twice as many of these "smaller" large irradiators. Thus, the total number of facilities that would ultimately be affected by the rule is roughly 70 to 80. All the irradiators use cobalt-60 except for four which use cesium-137. In addition to these irradiators, Congress has appropriated money to the U.S. Department of Energy to support the construction of six irradiators to be used in food processing. The food irradiators would be licensed by NRC or by Agreement States depending on their locations.

The NRC currently defines a small business as a business having less than $3.5 million in annual receipts. Some of the licensees that would be affected by this proposed rule might be small entities. However, the actual financial impacts of the proposed rule would be quite small. A survey of irradiators performed for the previously mentioned Regulatory Analysis indicated that, with minor exceptions, all surveyed licensees are in compliance with most of the requirements of the proposed rule. The proposed rule contains options such that the six licensees found not to be in full compliance with the proposed requirements could limit their incremental costs to $2,000 to $5,000, estimated as part of the previously mentioned Regulatory Analysis. These costs are not considered significant.

Thus, the proposed rule would not impose a significant economic impact on small entities, as defined in the Regulatory Flexibility Act of 1980, because the proposed requirements do not substantially differ from current licensing requirements.

Any small entity affected by this regulation which determines that, because of its size, it is likely to bear a disproportionate adverse economic impact, should notify the Commission of this in a comment that indicates the following:

(a) The small entity's size in terms of annual income or revenue and number of employees;

(b) How the proposed regulation would result in a significant economic burden upon the small entity as compared to that on a larger entity;

(c) How the proposed regulations could be modified to take into account the entity's differing needs or capabilities;

(d) The benefits that would be gained or the detriments that would be avoided by the licensee if the proposed regulations were modified as suggested; and

(e) How the regulation, as modified, would still adequately protect the public health and safety.

The comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

XIV. Backfit Analysis

The NRC 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. The proposed rule does not involve any provisions that would impose backfits as defined in 10 CFR 50.109 (a)(1).

XV. List of Subjects

10 CFR Part 19

Criminal penalty, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 20

Byproduct material, Criminal penalty, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

10 CFR Part 30

Byproduct material, Criminal penalty, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 36

Byproduct material, Criminal penalty, Nuclear materials, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

10 CFR Part 40

Criminal penalty, Government contracts, Hazardous materials—transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 51

Administration practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 70

Criminal penalty, Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 170

Byproduct material, Non-payment penalty, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

XVI. Wording of the Proposed Amendments

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt 10 CFR part 36 and make the conforming amendments to 10 CFR parts 19, 20, 21, 30, 40, 51, 70, and 170.

1. Part 36 is added to 10 CFR chapter I to read as follows:

PART 36—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR LARGE IRRADIATORS

Subpart A—General Provisions

Sec.
36.1 Purpose and scope.
36.2 Definitions.
36.5 Interpretations.
36.8 Information collection requirements: OMB approval.

Subpart B—Specific Licensing Requirements

36.11 Application for a specific license.
36.13 Specific licenses for large irradiators.
36.15 Start of construction.
36.17 Applications for exemptions.
36.19 Request for written statements.

Subpart C—Design and Performance Requirements for Large Irradiators

36.21 Design and performance criteria for sealed sources.
36.23 Access control.
36.25 Shielding.
36.27 Fire protection.
36.29 Radiation monitors.
36.31 Control of source movement.
36.33 Irradiator pools.
36.35 Source rack protection.
36.37 Power failures.
36.39 Design requirements.
36.41 Construction control.

Subpart D—Operation of Large Irradiators

36.51 Training.
36.53 Operating and emergency procedures.
36.55 Personnel monitoring.
36.57 Radiation surveys.
36.59 Detection of leaking or contaminated sources.
36.61 Operational inspection and maintenance.
36.63 Pool water purity.
36.65 Attendance during operation.
36.67 Entering and leaving the radiation room.
36.69 Irradiation of explosives or highly flammable materials.

Subpart E—Records and Reports

36.81 Records and retention periods.
36.83 Reports.

Subpart F—Enforcement

36.91 Violations.

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), all the provisions of this part are issued under Sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)) except the following provisions: 10 CFR 36.5, 36.8, and 36.91.

Subpart A—General Provisions

§ 36.1 Purpose and scope.

(a) This part contains requirements for the issuance of a license authorizing the use of sealed sources containing radioactive materials in large irradiators used to irradiate objects or materials. This part also contains radiation safety requirements for operating large irradiators. The requirements of this part are in addition to other requirements of this chapter. In particular, the provisions of parts 19, 20, 21, 30, 71, and 170 of this chapter apply to applications and licenses subject to this part.

(b) The regulations in this part apply to large panoramic irradiators that have either dry or wet storage of the radioactive sealed sources and to large underwater irradiators in which both the source and the product being irradiated are underwater. Large irradiators covered by the regulations in this part are those where radiation dose rates exceeding 500 rads (5 grays) per hour exist at one meter from the radioactive sealed sources in air or in water, as applicable for the irradiator type.

(c) The regulations in this part do not apply to self-contained dry-source-storage irradiators (those in which both the source and the area subject to irradiation are contained within a device and are not accessible by personnel), medical radiology or teletherapy, radiography (the irradiation of materials for nondestructive testing purposes), gauging, calibration of radiation detection instruments, or open-field (agricultural) irradiations.

§ 36.2 Definitions.

Annually means once each calendar year and at intervals not to exceed one year.

Doubly encapsulated sealed source means a sealed source in which the radioactive material is sealed within a capsule and that capsule is sealed within another capsule.

Irradiator means a facility that uses radioactive sealed sources for the irradiation of objects or materials.

Irradiator operator means an individual authorized by the licensee to operate the irradiator.

Large irradiator means an irradiator where radiation dose rates exceeding 500 rads (5 grays) per hour exist at one meter from the sealed radioactive sources in air or water, as applicable for the irradiator type, but does not include irradiators in which both the sealed source and the area subject to irradiation are contained within a device and are not accessible to personnel.

Panoramic dry-source-storage irradiator means an irradiator in which the irradiations occur in air in areas potentially accessible to personnel and in which the sources are stored in shields made of solid materials. The term also includes beam-type dry-source-storage irradiators in which the source remains partially shielded during irradiations.

Panoramic irradiator means an irradiator in which the irradiations are done in air in areas potentially accessible to personnel. The term includes beam-type irradiators.

Panoramic wet-source-storage irradiator means an irradiator in which the irradiations occur in air in areas potentially accessible to personnel and in which the sources are stored underwater in a storage pool.

Pool irradiator means any irradiator at which the sources are stored or used in a pool of water including panoramic wet-source-storage irradiators and underwater irradiators.

Product conveyor system means a system for moving the product to be irradiated to, from, and within the area where irradiation takes place.

Radiation room means a shielded room in which irradiations take place. Underwater irradiators are not considered to have radiation rooms.

Radiation safety officer means an individual with responsibility for the overall radiation safety program at the facility.

Sealed source means any byproduct material that is used as a source of radiation and is encased in a capsule designed to prevent leakage or escape of the byproduct material.

Seismic area means any area where the probability of a horizontal acceleration in rock of more than 0.3 times the acceleration of gravity in 250 years is greater than 10 percent, as designated by the U.S. Geological Survey.

Underwater irradiator means an irradiator in which the sources always remain shielded underwater and humans could not access the sealed sources and the space subject to irradiation without entering the pool.

§ 36.5 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission, other than a written interpretation by the General Counsel, will be recognized to be binding upon the Commission.

§ 36.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). OMB has approved the information collection requirements contained in this part under control number 3150-_____.

(b) The approved information collection requirements contained in this part appear in §§ 36.11, 36.13, 36.19, 36.21, 31.61, 36.69, 36.81, and 36.83.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

(1) In § 36.11, Form NRC-313 is approved under control number 3150-0120.

Subpart B—Specific Licensing Requirements

§ 36.11 Application for a specific license.

A person, as defined in § 30.4 of this chapter, may file an application for a specific license authorizing the use of sealed sources in a large irradiator on Form NRC 313, "Application for Material License." Each application for a license, other than a license exempted from part 170 of this chapter, must be accompanied by the fee prescribed in § 170.31 of this chapter. The application must be sent to the appropriate NRC Regional Office listed in Appendix D to part 20 of this chapter.

§ 36.13 Specific licenses for large irradiators.

The Commission will approve an application for a specific license for the use of licensed material in large irradiators if the applicant meets the requirements contained in this section.

(a) The applicant shall satisfy the general requirements specified in § 30.33 of this chapter and the requirements contained in this part.

(b) The applicant shall describe its training for irradiator operators that specifies the—

(1) Classroom training;

(2) On-the-job training;

(3) Safety reviews;

(4) Means the applicant will use to demonstrate the operator's knowledge and understanding of and ability to comply with the Commission's regulations and licensing requirements and the applicant's operating and emergency procedures; and

(5) Minimum qualifications of personnel who may provide training.

(c) The applicant shall submit an outline or summary of the written operating and emergency procedures listed in § 36.53. The outline or summary must include the important radiation safety aspects of the procedures.

(d) The applicant shall describe the radiation safety responsibilities and authorities of the radiation safety officer and other management personnel. The applicant shall also describe the qualifications required of the radiation safety officer.

(e) The applicant for a panoramic irradiator shall submit a description of the access control systems required by § 36.23, the radiation monitors required by § 36.29, and a diagram of the facility that shows the position of all required interlocks and radiation monitors.

(f) If the applicant intends to perform leak testing of dry-source-storage sealed sources, the applicant shall establish procedures for leak testing and submit a description of these procedures to the Commission. The description must include the—

(1) Instruments to be used;

(2) Methods of performing the analysis; and

(3) Pertinent experience of the individual who analyzes the samples.

(g) If licensee personnel are to load or unload sources, the applicant shall describe the qualifications of the personnel and the procedures to be used. If the applicant intends to contract for source loading or unloading at its facility, the loading or unloading must be done by an organization approved by the Commission or an Agreement State to load or unload irradiator sources.

(h) The applicant shall describe the operational inspection and maintenance program, including the frequency of the operational checks required by § 36.61.

§ 36.15 Start of construction.

The applicant shall not begin construction of a new facility prior to the issuance of a license for the facility. As used in this paragraph, the term "construction" includes the construction of any portion of the permanent facility on the site but does not include: Engineering and design work, purchase of a site, site surveys or soil testing, site preparation, site excavation, construction of warehouse structures, and other similar tasks. Any activities undertaken prior to the issuance of a license must be entirely at the risk of the applicant and have no bearing on the issuance of a license with respect to the requirements of the Atomic Energy Act of 1954, as amended, and rules, regulations, and orders promulgated pursuant thereto.

§ 36.17 Applications for exemptions.

The Commission may, upon application of any interested person or upon its own initiative, grant any exemptions from the requirements in this part that it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

§ 36.19 Request for written statements.

Each license is issued with the condition that the licensee will, at any time before expiration of the license, upon the Commission's request, submit written statements, signed under oath or affirmation, to enable the Commission to determine whether or not the license should be modified, suspended, or revoked.

Subpart C—Design and Performance Requirements for Large Irradiators

§ 36.21 Design and performance criteria for sealed sources.

(a) The licensee shall assure that sealed sources installed after (effective date of rule) meet the following requirements. A prototype of the sealed source must be leak tested and found leak-free after each of the following tests:

(1) *Temperature.* The test source must be held at −40°C for 20 minutes, 600°C for 1 hour, and then be subjected to a thermal shock test with a temperature drop from 600°C to 20°C within 15 seconds.

(2) *Pressure.* The test source must be subjected to an external pressure of 290 pounds per square inch absolute.

(3) *Impact.* A 2 kg steel weight, 2.5 cm in diameter, must be dropped from a height of 1 m onto the test source.

(4) *Vibration.* The test source must be subjected to a vibration from 25 Hz to 500 Hz at 5 times the acceleration of gravity for 30 minutes.

(5) *Puncture.* A 50 gram weight and pin, 0.3 cm pin diameter, must be dropped from a height of 1 m onto the test source.

(6) *Bend.* If the length of the source is more than 15 times larger than the minimum cross-sectional dimension, the test source must be subjected to a force of 2000 newtons at its center equidistant from two support cylinders, the distance between which is 10 times the minimum cross-sectional dimension of the source.

(b) Sealed sources installed after (effective date of rule) must be doubly encapsulated and must have a certificate of registration as required by 10 CFR 32.210.

§ 36.23 Access control.

(a) Each entrance to a radiation room at a panoramic irradiator must have a door or other physical barrier to prevent inadvertent entry of personnel while the sources are exposed. It must not be possible to move the sources out of their shielded position if the door or barrier is open. Opening the door or barrier while the sources are exposed must cause the sources to return to their shielded position. The time for the sources to return to the shielded position must be less than or equal to the time that it would take a person starting to enter the radiation room to walk to the edge of the pool or into the beam (as applicable for irradiator type). The primary entry door must have a lock that is operated by the same key used to move the sources. The doors and barriers must not prevent any individual in the radiation room from leaving.

(b) In addition, each entrance to a radiation room at a panoramic irradiator must have an independent backup access control to detect personnel entry while the sources are exposed if the primary access control fails. Entry while the sources are exposed must cause the sources to return to their fully shielded position and must also activate a visible and audible alarm to make the individual entering the room aware of the hazard. The alarm must also alert at least one other individual who is on site of the entry. That individual shall be trained and prepared to promptly render or summon assistance.

(c) A radiation monitor must be provided to detect the presence of radiation in the radiation room of a panoramic irradiator before personnel entry. The monitor must be integrated with personnel access door locks to prevent room access when the monitor detects high radiation levels, malfunctions, or is turned off. The monitor must generate audible and visible alarms if high radiation levels are detected when personnel entry is attempted. The monitor may be located in the entrance (normally referred to as the maze), but not in the direct radiation beam.

(d) Before the sources move from their shielded position in a panoramic irradiator, the source control must automatically activate conspicuous visible and audible alarms to alert people in the radiation room that the sources will be moved from their shielded position. The alarms must give individuals enough time to leave the room before the sources leave the shielded position.

(e) Each radiation room at a panoramic irradiator must have a clearly visible and readily accessible control that would allow an individual in the room to make the sources return to their fully shielded position.

(f) Each radiation room of a panoramic irradiator must contain a control that allows the sources to move from the shielded position only if the control has been activated and the door or barrier to the radiation room has been subsequently closed within a preset time.

(g) Each entrance to the radiation room of a panoramic irradiator and each entrance to the area within the personnel access barrier of an underwater irradiator must have a sign bearing the radiation symbol and the words, "Caution (or danger) radioactive material." Panoramic irradiators must also have a sign stating "High radiation area," but the sign may be removed, covered, or otherwise made inoperative when the sources are fully shielded.

(h) If the radiation room of a panoramic irradiator has roof plugs or other movable shielding, it must not be possible to operate the irradiator unless the shielding is in its proper location. This requirement may be met by interlocks that prevent operation if shielding is not placed properly or by an operating procedure requiring inspection of shielding before operating.

(i) Panoramic irradiators may not operate if the requirements of this section are not met.

(j) Underwater irradiators must have a personnel access barrier around the pool that can be locked to prevent access when the irradiator is not attended. Only operators and facility management may have access to keys to the personnel access barrier. There must be an intrusion alarm to detect unauthorized entry when the personnel access barrier is locked. Activation of

the intrusion alarm must alert an individual (not necessarily onsite) who is prepared to respond or summon assistance.

§ 36.25 Shielding.

(a) The radiation dose rate in areas that are accessible during operation of a panoramic irradiator must not exceed 2 millirems (0.00002 sievert) per hour at 30 centimeters or more from the wall of the room when the sources are exposed. The dose rate must be averaged over an area not to exceed 100 square centimeters having no linear dimension greater than 20 cm. Areas where the radiation dose rate exceeds 2 millirems (0.00002 sievert) per hour must be locked to prevent access and not entered without written approval of the radiation safety officer.

(b) The radiation dose at 30 centimeters over the pool of a pool irradiator when the source is in the fully shielded position must not exceed 2 millirems (0.00002 sievert) per hour.

(c) The radiation dose rate at 1 meter from the shield of a dry-source-storage panoramic irradiator must not exceed 2 millirems (0.00002 sievert) per hour and at 5 centimeters from the shield must not exceed 20 millirems (0.0002 sievert) per hour.

§ 36.27 Fire protection.

(a) The radiation room at a panoramic irradiator must have heat and smoke detectors. The detectors must activate an audible alarm. The alarm must be capable of alerting a person who is prepared to summon assistance promptly. The sources must automatically become fully shielded if a fire is detected.

(b) The radiation room at a panoramic irradiator must be equipped with a fire suppression or extinguishing system capable of extinguishing a fire without the entry of personnel into the room.

§ 36.29 Radiation monitors.

(a) A radiation monitor with an audible alarm must be located to detect loose radiation sources that are carried toward the product exit. If the monitor detects a source, an alarm must sound and product conveyors must stop automatically before radiation from the source could cause any individual to receive a radiation dose exceeding 100 mrem. The alarm must be capable of alerting an individual in the facility who is prepared to summon assistance. Underwater irradiators in which the product moves within an enclosed dry tube are exempt from the requirements of this paragraph.

(b) For pool irradiators, the licensee shall provide a means to detect radioactive contamination in pool water each day the irradiator operates. The means may be either an online radiation monitor on a pool water purification system or an analysis of pool water. If the licensee uses an online radiation monitor, the detection of above normal radiation levels must activate an alarm. The alarm set-point must be set as low as practical, but high enough to avoid false alarms. If a false alarm due to background radiation occurs, the alarm set-point must be increased. Activation of the alarm must automatically cause the water purification system to shut off. However, the licensee may reset the alarm set-point to a higher level if necessary to operate the pool water purification system to clean up contamination in the pool as specifically provided in written emergency procedures.

(c) Underwater irradiators that are not in a shielded radiation room must have a radiation monitor over the pool to detect abnormal radiation levels. The monitor must have an audible alarm and a visible indicator at entrances to the personnel access barrier around the pool. The audible alarm may have a manual shut-off. The alarm must be capable of alerting an individual who is prepared to respond promptly.

§ 36.31 Control of source movement.

(a) The mechanism that moves the sources of a panoramic irradiator must require a key to operate. Only one key may be in use at any time, and only operators or facility management may possess it. The lock must be designed so that the key may not be removed if the source is in an unshielded position. The door to the radiation room must require the same key.

(b) The console of a panoramic irradiator must have a source position indicator that indicates when the sources are in the fully shielded position, when they are in transit, and when the sources are exposed.

(c) The control console of a panoramic irradiator must have a control that promptly returns the sources to the shielded position.

(d) Each control for a panoramic irradiator must be clearly labeled as to its function.

(e) Controls for a panoramic irradiator must be color-coded or illuminated as follows: Red represents emergency (stop buttons or lights) or critical information (source in use or malfunction); yellow or orange represents caution (no emergency but some function taking place to be aware of); green or blue represents normal or safe functioning or information (source not in use or function safe).

§ 36.33 Irradiator pools.

(a) For licenses initially issued after (effective date of rule) irradiator pools must either: (1) Have a water-tight stainless steel liner or a liner metallurgically compatible with other components in the pool, or (2) be constructed so that there is a low likelihood of substantial leakage and have a surface designed to facilitate decontamination. In both cases irradiators must include a means of safely storing the sources during repairs of the pool walls.

(b) For licenses initially issued after (effective date of rule) irradiator pools must have no penetrations more than 1 foot below the normal low water level that could allow water to drain out of the pool. Pipes that have intakes more than 1 foot below the normal low water level must have siphon breakers to prevent the syphoning of pool water lower than 1 foot below the normal low water level.

(c) A means must be provided to replenish water losses from the pool.

(d) An audible and a visible indicator must be provided to indicate if the pool water level falls below the normal low water level.

(e) Irradiator pools must be equipped with a purification system designed to maintain the water, under normal circumstances, at a level of conductance not exceeding 10 microsiemens per centimeter.

(f) A physical barrier, such as a railing or cover, must be used around irradiator pools during normal operation to prevent personnel from accidentally falling into the pool. The barrier may be removed during maintenance, inspection, and service operations.

(g) If hollow poles, hollow long-handled tools, or tools with a density less than that of water are used to be used in irradiator pools, they must have vent holes to allow water to enter them readily and fill voids to prevent radiation streaming or they must have sufficient bends so that the radiation levels on the handling areas of the tools do not exceed 2 millirems (0.00002 sievert) per hour.

§ 36.35 Source rack protection.

If the product to be irradiated moves on a product conveyor system, the source rack and the mechanism that moves the rack must be protected by a barrier or guides to prevent products and product carriers from hitting or touching the rack or mechanism.

§ 36.37 Power failures.

(a) If electrical power at a panoramic irradiator is lost for longer than 10

seconds, the sources must automatically return to the shielded position.

(b) The lock on the door of the radiation room of a panoramic irradiator must not be deactivated by a power failure.

(c) During a power failure, the area around the pool of an underwater irradiator may not be entered without using an operable and calibrated radiation survey meter.

§ 36.39 Design requirements.

Irradiators whose construction begins after (effective date of rule) must meet the design requirements of this section. The requirements must be met prior to the start of the construction of the specific component, but do not have to be met prior to submitting a license application.

(a) *Shielding.* For panoramic irradiators, the licensee shall design shielding walls to meet generally accepted building code requirements for reinforced concrete and design the walls, wall penetrations, and entranceways to meet the radiation shielding requirements of § 36.25.

(b) *Foundations.* For panoramic irradiators, the licensee shall design the foundation to ensure it is adequate to support the weight of the facility considering soil characteristics.

(c) *Pool integrity.* For pool irradiators, the licensee shall design the pool to assure that it is leak resistant, that it is strong enough to bear the weight of the pool water and shipping casks, that a dropped cask would not fall on sealed sources, that it has no penetrations that do not meet the requirements of § 36.33(b), and that metal components are metallurgically compatible with other components in the pool.

(d) *Water handling system.* For pool irradiators, the licensee shall design the water purification system to meet the requirements of § 36.33(e).

(e) *Radiation monitors.* For all irradiators, the licensee shall evaluate the location and sensitivity of the monitor to detect sources carried by the product conveyor system as required by § 36.29(a). The licensee shall verify that the product conveyor would stop before a source on the product conveyor could cause a radiation dose to any person to exceed 100 mrem (0.001 sievert). For pool irradiators, the licensee shall verify that the radiation monitor on the water purification system is located near the spot at which the highest radiation levels would be expected.

(f) *Source rack.* For panoramic irradiators, the licensee shall determine that source rack drops due to loss of power will not damage the source rack and that source rack drops due to failure of cables (or alternate means of support) will not cause loss of integrity of sealed sources. For panoramic irradiators, the licensee shall review the design of the mechanism that moves the sources to assure that the likelihood of a stuck source is low and that, if the rack sticks, a means exists to free it without causing radiation overexposures of personnel.

(g) *Access control.* For panoramic irradiators, the licensee shall verify from the design and logic diagram that the access control system will meet the requirements of § 36.23.

(h) *Fire protection.* For panoramic irradiators, the licensee shall verify that the design and locations of the smoke and heat detectors and extinguishing system are appropriate to detect and extinguish fires.

(i) *Source return.* For panoramic irradiators, the licensee shall verify that the source rack can be returned to the fully shielded position if offsite power is lost or if a component of the return mechanism fails. The design must allow for accomplishing the return without causing radiation overexposures of personnel.

(j) *Seismic.* For panoramic irradiators to be built in seismic areas, the licensee shall design the reinforced concrete radiation shields to retain their integrity in the event of an earthquake by designing to the seismic requirements of an appropriate source such as ACI Standard 318–77, "Building Code Requirements for Reinforced Concrete," or local building codes, if current.

§ 36.41 Construction control.

The requirements of this section must be met for irradiators whose construction begins after (effective date of the rule). The requirements of this section must be met prior to loading sources.

(a) *Shielding.* For panoramic irradiators, the licensee shall monitor the construction of the shielding to verify that its construction meets design specifications and generally accepted building code requirements for reinforced concrete.

(b) *Foundations.* For panoramic irradiators, the licensee shall monitor the construction of the foundations to verify that their construction meets design specifications.

(c) *Pool integrity.* For pool irradiators, the licensee shall verify that the pool meets design specifications and shall test the integrity of the pool. The licensee shall verify that penetrations and water intakes meet the requirements of § 36.33(b).

(d) *Water handling system.* For pool irradiators, the licensee shall verify that the water purification system, the conductivity meter and the water level alarms operate properly.

(e) *Radiation monitors.* For all irradiators, the licensee shall verify the proper operation of the monitor to detect sources carried on product and the related alarms and interlocks required by § 36.29(a). For pool irradiators, the licensee shall verify the proper operation of the radiation monitor on the water purification system and the related alarms and interlocks required by § 36.29(b). For underwater irradiators, the licensee shall verify the proper operation of the over-the-pool monitor, alarms, and interlocks required by § 36.29(c).

(f) *Source rack.* For panoramic irradiators, the licensee shall test the movement of the source racks for proper operation prior to source loading; testing must include source rack lowering due to simulated loss-of-power. For all irradiators with product conveyor systems, the licensee shall observe and test the operation of the conveyor system to assure that the requirements in § 36.35 are met for protection of the source racks and the mechanism that moves the rack; testing must include tests of any limit switches and interlocks used to protect the source rack and mechanism that moves the rack from moving product carriers.

(g) *Access control.* For panoramic irradiators, the licensee shall test the completed access control system to assure that it functions as designed and that all alarms, controls, and interlocks work properly.

(h) *Fire protection.* For panoramic irradiators, the licensee shall verify the ability of the heat and smoke detectors to detect a fire, to activate alarms, and to cause the source rack to automatically become fully shielded. The licensee shall also verify the operability of the fire suppression or extinguishing system.

(i) *Source return.* For panoramic irradiators, the licensee shall demonstrate that the source racks can be returned to their fully shielded positions without offsite power.

(j) *Computer systems.* For panoramic irradiators, if a computer is used to control the access control system, the licensee shall demonstrate that the computer and the access control system operate as planned by attempting to defeat the access control system in as many ways as possible. The computer must have suitable security features that prevent an irradiator operator from commanding the computer to override the access control system when it is required to be operable.

Subpart D—Operation of Large Irradiators

§ 36.51 Training.

(a) Before an individual is permitted to operate an irradiator without a supervisor present, the individual must be instructed in:

(1) The fundamentals of radiation protection applied to irradiators (including the differences between external radiation and radioactive contamination, units of radiation dose, NRC dose limits, why large radiation doses must be avoided, how shielding and access controls prevent large doses, how an irradiator is designed to avoid contamination, the use of survey meters and personnel dosimeters, other radiation safety features of an irradiator, and the basic function of the irradiator;

(2) The requirements of parts 19 and 36 of NRC regulations;

(3) The operation of the irradiator;

(4) Licensee operating and emergency procedures that the individual is responsible for performing; and

(5) Case histories of accidents or problems involving irradiators similar to those to be used by the individual.

(b) Before an individual is permitted to operate an irradiator without a supervisor present, the individual shall pass a written test on the instruction received consisting primarily of questions based on the licensee's operating and emergency procedures.

(c) Before an individual is permitted to operate an irradiator without a supervisor present, the individual must have received on-the-job training in the use of the irradiator as described in the license application. The individual shall also demonstrate the ability to perform those portions of the operating and emergency procedures that he or she is to perform.

(d) The licensee shall conduct safety reviews and emergency drills, as described below, for irradiator operators at least annually. The licensee shall give each operator a brief written test on the information. Each safety review must include, to the extent appropriate, each of the following—

(1) Changes in operating and emergency procedures since the last review, if any;

(2) Changes in regulations and license conditions since the last review, if any;

(3) NRC reports on recent accidents, mistakes, or problems that have occurred at irradiators, if any;

(4) Relevant results of inspections of operator safety performance;

(5) Relevant results of the facility's operational quality assurance program; and

(6) A drill to practice an emergency or abnormal event procedure.

(e) The radiation safety officer or other management personnel shall evaluate the safety performance of each irradiator operator at least annually to ensure that regulations, license conditions, and operating and emergency procedures are followed. The licensee shall discuss the results of the evaluation with the operator, and shall instruct the operator on how to correct any mistakes or deficiencies observed.

(f) Individuals who will be permitted unescorted access to the irradiator, but who have not received the training required for operators and the radiation safety officer, shall be trained and tested in precautions they should take to avoid radiation exposure, procedures or parts of procedures in § 36.53 that they are expected to perform or comply with, and their proper response to alarms required in this part. Tests may be oral.

(g) Individuals who must be prepared to respond to alarms required by § 36.23(b), § 36.23(c), § 36.23(j), § 36.27(a), § 36.29(a), § 36.29(b), § 36.29(c), and § 36.33(d) shall be trained and tested on how to respond. Each individual shall be retested at least once a year. Tests may be oral.

§ 36.53 Operating and emergency procedures.

(a) The licensee shall have and follow written operating procedures for—

(1) Operation of the irradiator, including entering and leaving the radiation room;

(2) Use of personnel dosimeters;

(3) Surveying the shielding of panoramic irradiators;

(4) Monitoring pool water for contamination while the water is in the pool and before release of pool water to unrestricted areas;

(5) Leak testing of sources;

(6) Operational inspection and maintenance checks required by § 36.61; and

(7) Loading, unloading, and repositioning sources, if the operations will be performed by the licensee.

(b) The licensee shall have and follow emergency or abnormal event procedures, appropriate for the irradiator type, for—

(1) Sources stuck in the unshielded position;

(2) Personnel overexposures;

(3) A radiation alarm from the product exit portal monitor or pool monitor;

(4) Detection of leaking sources, pool contamination, or alarm caused by contamination of pool water;

(5) A low water level alarm, an abnormal water loss, or leakage from the source storage pool;

(6) A loss of electrical power;

(7) A fire alarm or explosion in the radiation room;

(8) An alarm indicating unauthorized entry into radiation room, area around pool, or another alarmed area; and

(9) Natural phenomena, including an earthquake, a tornado, flooding, or other phenomena as appropriate for the geographical location of the facility.

(c) The licensee may revise operating and emergency procedures without Commission approval only if all of the following conditions are met:

(1) The revisions do not reduce the safety of the facility.

(2) The revisions are consistent with the outline or summary of procedures submitted with the license application.

(3) The revisions have been reviewed and approved by the radiation safety officer, and

(4) The users or operators are instructed and tested on the revised procedures before they are put into use.

§ 36.55 Personnel monitoring.

(a) Irradiator operators shall wear either a film badge or a thermoluminescent dosimeter (TLD) while operating a panoramic irradiator or while in the area around the pool of an underwater irradiator. The film badge or TLD must be suitable for high energy photons in the normal and accident dose ranges. Each film badge or TLD must be assigned to and worn by only one individual. Film badges must be replaced at least monthly, and TLDs must be replaced at least quarterly. After replacement, each film badge or TLD must be promptly processed.

(b) Other individuals who enter the radiation room of a panoramic irradiator shall wear a dosimeter, which may be a pocket dosimeter. For groups of visitors, only two people are required to wear dosimeters.

§ 36.57 Radiation surveys.

(a) A radiation survey of the area outside the shielding of the radiation room of a panoramic irradiator must be conducted with the sources in the exposed position before the facility starts to operate. A radiation survey of the area above the pool or pool irradiators must be conducted after the sources are loaded before the facility starts to operate. If the radiation levels specified in § 36.25 are exceeded, the shielding must be repaired to comply with the dose rate requirement in § 36.25 before operation of the facility may start.

(b) An additional radiation survey of the shielding must be performed after new sources are loaded and after any

modifications that might increase dose rates are made to the radiation room shielding or structure.

(c) Portable radiation survey meters used to meet the requirements of paragraphs (a) and (b) of this section or the requirements of § 36.37(c) or § 36.67(a) must be calibrated at least annually to an accuracy of ±20 percent for the gamma energy of the sources in use. The calibration must be done at two points on each scale.

(d) Water from the irradiator pool or other potentially contaminated liquids must be monitored for radioactive contamination before release to unrestricted areas. Radioactive concentrations must not exceed those specified in 10 CFR part 20, Table II, Column 2 of Appendix B, "Concentrations in Air and Water Above Natural Background." The lower limit of detection for the measurement must be below those concentrations.

(e) Resins to be released for regeneration or an nonradioactive waste must be monitored before release in an area with a background level less than 0.05 millirem (0.0005 millisievert) per hour. The resins may be released only if the survey does not detect radiation levels above background radiation levels. The survey meter must be capable of detecting radiation levels of 0.05 millirem (0.0005 millisievert) per hour.

§ 36.59 Detection of leaking or contaminated sources.

(a) The licensee shall assure that each sealed source received by the licensee after (effective date of rule) has been tested for contamination within the 6 months prior to being shipped to the licensee.

(b) Each dry-source-storage sealed source must be tested for leakage at intervals not to exceed 6 months using a leak test kit or method approved by the Commission or an Agreement State. The analysis must be capable of detecting the presence of 0.005 microcurie (185 becquerels) of radioactive material and must be performed by a person approved by the Commission or an Agreement State to perform the analysis.

(c) For pool irradiators, the pool water must be checked for contamination each day the irradiator operates. The check must be done by using an online radiation monitor on a pool water circulating system as described in § 36.29 (b) or by analysis of pool water. If a check for contamination is done by analysis of pool water, the results of the analysis must be available within 24 hours.

(d) If a leaking source is detected, the licensee shall remove the leaking source from service and have it decontaminated, repaired, or disposed of by an NRC or Agreement State licensee that is authorized to perform these functions. The licensee shall promptly check its personnel, equipment, facilities, and irradiated product for radioactive contamination. No product may be shipped until the contamination check has been done. If any personnel are contaminated, decontamination must be performed promptly. If contaminated equipment, facilities, or product are found, the licensee shall have them decontaminated or disposed of by an NRC or Agreement State licensee that is authorized to perform these functions. If a pool is contaminated, the licensee shall clean the pool until the contamination levels do not exceed the appropriate concentration in table I, column 2, appendix B of part 20 of this chapter.

§ 36.61 Operational inspection and maintenance.

(a) The licensee shall establish and implement an adequate operational inspection and maintenance program as described in license application (§ 36.16(h)). This program shall include, as a minimum, inspecting or checking each of the following aspects at the frequency specified in the license or license application:

(1) Operability of each aspect of the access control system required by § 36.23.

(2) Functioning of the source position indicator required by § 36.31(b).

(3) Operability of the radiation monitor on the pool water purification system using a radiation check source if this method is chosen to detect radioactive contamination in pool water (§ 36.29(b)).

(4) Pool conductivity as required by § 36.63(a).

(5) Operability of the product exit monitor required by § 36.29.

(6) Operability of the source return control required by § 36.31(c).

(7) Leak-tightness of the pool purification system (visual inspection).

(8) Operability of the heat and smoke detectors and extinguisher system required by § 36.27.

(9) Operability of the means of pool water replenishment required by § 36.33(c).

(10) Operability of the visible indicator of low pool water level required by § 36.33(d).

(11) Operability of the intrusion alarm required by § 36.23(j), if applicable.

(12) Functioning and wear on the system, mechanisms, and cables used to raise and lower sources.

(13) Condition of the barrier to prevent products from hitting the sources or source mechanism as required by § 36.35.

(14) Amount of water added to the pool to determine if the pool is leaking.

(15) Electrical wiring on required safety systems for radiation damage.

(b) Malfunctions and defects found during operational inspection and maintenance checks must be repaired without undue delay.

§ 36.63 Pool water purity.

(a) Pool water purification systems must be run each day the irradiator operates and at least monthly during shutdowns. The purification system must continue running until the conductivity of the pool water drops below 10 microsiemens per centimeter.

(b) The conductivity meter must be calibrated at least annually.

§ 36.65 Attendance during operation.

(a) Both an operator and at least one other individual trained and prepared to promptly render or summon assistance if the access control alarm sounds, shall be present on site whenever the irradiator is operated using an automatic product conveyor system.

(b) At a panoramic irradiator at which static irradiations (no movement of the product) are being performed, a person who has received the operator training and testing described in § 36.51 (a) and (b) and the training on how to respond to alarms described in § 36.51(g) must be on site.

(c) At an underwater irradiator, an operator must be present whenever product is moved into or out of the pool. Static irradiations may be performed without a person present at the facility only if the personnel access barrier around the pool is locked to prevent unauthorized entry and all required alarms are operable.

§ 36.67 Entering and leaving the radiation room.

(a) Upon first entering the radiation room of a panoramic irradiator after an irradiation, the irradiator operator shall use a survey meter to determine that the source has returned to its fully shielded position. The operator shall check the functioning of the survey meter with a radiation check source prior to entry.

(b) Before exiting from and locking the door to the radiation room of a panoramic irradiator prior to a planned irradiation, the irradiator operator shall: (1) Visually inspect the entire radiation

room to verify that no one else is in it and (2) activate a control in the radiation room that permits the sources to be moved from the shielded position only if the door to the radiation room is locked within a preset time after setting the control.

(c) During a power failure, the area around the pool of an underwater irradiator shall not be entered without using an operable and calibrated radiation survey meter.

§ 36.69 Irradiation of explosive or highly flammable materials.

(a) Irradiation of explosive material is prohibited unless the licensee has received prior written authorization from the Commission. Authorization will not be granted unless the licensee can demonstrate in the license application or application for amendment that detonation of the explosive would not rupture the sealed sources, injure personnel, damage safety systems, or cause radiation overexposures of personnel.

(b) Irradiation of more than traces of highly flammable material (flash point below 140 °F) is prohibited in panoramic irradiators unless the licensee has received prior written authorization from the Commission. Authorization will not be granted unless the licensee can demonstrate in the license application or application for amendment that a fire in the radiation room could be controlled without damage to sealed sources or safety systems and without radiation overexposures of personnel.

Subpart E—Records and Reports

§ 36.81 Records and retention periods.

The licensee shall maintain the following records at the irradiator for the periods specified.

(a) A Copy of the license application and the license authorizing the licensee to operate the facility until a new license is issued.

(b) Records of an individual's training, tests, and safety reviews provided to meet the requirements of § 36.51(a), (b), (c), (d), (f), and (g) until 3 years after the individual terminates work.

(c) Records of the annual evaluations of the safety performance of irradiator operators required by § 36.51(e) for 3 years after the evaluation.

(d) An up-to-date copy of the operating and emergency procedures required by § 35.53. Record of changes in procedures as required by § 36.53(c)(3) retained for 3 years from the date of the change.

(e) Film badge and TLD results required by § 36.55 until the Commission terminates the license.

(f) Records of radiation surveys required by § 36.57 for 3 years from the date of the survey.

(g) Records of radiation survey meter calibrations required by § 36.57 until 3 years from the date of calibration.

(h) Records of the results of leak tests required by § 36.59 for 3 years from the date of the leak test.

(i) Records of operational inspection and maintenance checks required by § 36.61 for 3 years.

(j) Records of malfunctions, defects, operating difficulties or irregularities, and operating problems for 3 years after repairs are completed.

(k) An inventory of all licensed sealed sources until the irradiator is decommissioned. The inventory must include for each sealed source: the date received; the person from whom it was received; the model of the source; the serial number of the source, if any; the radionuclide in the source; the activity of the source as supplied by the manufacturer; an up-to-date location of the source; information on leaking or damaged sources and any actions taken to decontaminate or repair those sources; the date source was disposed of, if applicable; and the person to whom the source was transferred, if applicable.

(l) Records on the design checks required by § 36.39 and the construction control checks as required by § 36.41 until the license is terminated. The records must be signed and dated. The title or qualification of the person signing must be included:

(m) Records of water added to the pool as required by § 36.61(a)(14) for three years.

(n) Records related to decommissioning of the irradiator as required by § 36.35(g).

§ 36.83 Reports.

(a) The licensee shall report to the Commission—

(1) The theft or loss of radioactive material as required by 10 CFR 20.402; and

(2) Events involving radioactive material possessed by the licensee that may have caused or threaten to cause radiation overexposures, excessive concentrations or levels of radiation, loss of one day or more of operation of the facility, or property damage in excess of $2000 as required by 10 CFR 20.403 or 20.405.

(b) The licensee shall notify individuals of their exposure to radiation or radioactive material as required by 10 CFR 19.13.

(c) The licensee shall report, in writing, leaking sources, damaged sources, and pool water contaminated in excess of the concentrations in table 1, column 2 of appendix B to 10 CFR part 20 to the appropriate NRC Regional Office listed in appendix D to part 20 of this chapter within 5 days of discovering the contamination. The report must describe the source involved if known, the extent of the leakage or contamination, the cause or circumstances leading to the leak or contamination to the extent that they are known, and corrective actions taken up to the time the report is made.

(d) The licensee shall report within 5 days in writing to the appropriate NRC Regional Office listed in appendix D of 10 CFR part 20 the following events if not reported under paragraphs (a) or (c) of this section:

(1) Sources stuck in an unshielded position.

(2) Fire or explosion in a radiation room.

(3) Damage to source racks.

(4) Failure of the cable or drive mechanism used to move the source racks.

(5) Inoperability of the access control system.

(6) Detection of radiation by the product exit portal monitor.

(7) Abnormal or unusual radioactive contamination.

(8) Structural damage to the pool liner or walls.

(9) Abnormal water loss or leakage from the source storage pool.

(e) Reports must describe the event, what caused it (to the extent known), and corrective actions to prevent recurrence taken up to the time the report is made.

Subpart F—Enforcement

§ 36.91 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of this part.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed for violation of this part.

(c) Any person who willfully violates any provision of this part issued under section 161b., i., or o. of the Atomic Energy Act of 1954, as amended, or the provisions cited in the authority citation at the beginning of this part may be guilty of a crime and, upon conviction, be punished by fine or imprisonment, or both, as provided by law.

PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS; INSPECTIONS

2. The authority citation for part 19 continues to read, in part, a follows:

Authority: Section 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841)* * *.

§ 19.2 [Amended]

3. Section 19.2 is amended by changing "35" to "36."

§ 19.3 [Amended]

4. Section 19.3(d) is amended by changing "35" to "36" in the first sentence.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

5. The authority citation for part 20 continues to read, in part, as follows:

Authority: Section 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841)* * *.

§ 20.2 [Amended]

6. Section 20.2 is amended by changing "35" to "36."

§ 20.3 [Amended]

7. Section 20.3(a)(9) is amended by changing "35" to "36."

§ 20.203 [Amended]

8. In § 20.203, paragraphs (c)(6) and (c)(7) are removed.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

9. The authority citation for part 30 continues to read, in part, as follows:

Authority: Section 161, Pub. L. 83-703, 68 Stat 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93-438, 88 Stat. 1242 as amended (42 U.S.C. 5841)* * *.

§ 30.4 [Amended]

10. In § 30.4, the definition of "License", is amended by changing "35" to "36."

§ 30.5 [Amended]

11. In § 30.5 is amended by changing "35" to "36."

§ 30.6 [Amended]

12. In § 30.6, paragraphs (a) and (b)(1) are amended by changing "35" to "36."

§ 30.11 [Amended]

13. In § 30.11, paragraph (a) is amended by changing "35" to "36."

§ 30.13 [Amended]

14. Section 30.13 is amended by changing "35" to "36."

§ 30.14 [Amended]

15. In § 30.14, paragraph (a) is amended by changing "35" to "36," and paragraph (c) is amended by adding ",36" after "33, 34".

§ 30.15 [Amended]

16. In § 30.15, the introductory text of paragraph (a) is amended by changing "35" to "36."

§ 30.16 [Amended]

17. Section 30.16 is amended by changing "35" to "36."

§ 30.18 [Amended]

18. In § 30.18, paragraph (a) is amended by adding, "36" after "30 through 34."

§ 30.19 [Amended]

19. In § 30.19, paragraph (a) is amended by changing "35" to "36."

§ 30.20 [Amended]

20. In § 30.20, paragraph (a) is amended by changing "35" to "36."

§ 30.31 [Amended]

21. Section 30.31 is amended by changing "35" to "36."

§ 30.33 [Amended]

22. Section 30.33, paragraph (a)(4) is amended by changing "35" to "36."

§ 30.34 [Amended]

23. Section 30.34, paragraphs (a) and (b) are amended by changing "35" to "36"; paragraph (c) is amended by changing "35" to "36" in the first and the second sentences; paragraphs (d) and (e) are amended by changing "35" to "36."

§ 30.39 [Amended]

24. Section 30.39 is amended by changing "35" to "36."

§ 30.51 [Amended]

25. In § 30.51, paragraphs (a), (b), (c)(1), and (c)(2) are amended by changing "35" to "36".

§ 30.53 [Amended]

26. The introductory text of § 30.53 is amended by changing "35" to "36".

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

27. The authority citation for part 40 continues to read, in part, as follows:

Authority: Section 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201); section 201, Pub. L. 93-438.88 Stat. 1242 as amended (42 U.S.C. 5841) * * *.

§ 40.5 [Amended]

28. In § 40.5, paragraph (b)(1) is amended by changing "35" to "36," in the first sentence.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

29. The authority citation for part 51 continues to read, in part, as follows:

Authority: Section 161, 68 Stat. 948, as amended (42 U.S.C. 2201); section 201 as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842) * * *.

§ 51.22 [Amended]

30. In § 51.22, paragraphs (c)(3), (c)(10) and (c)(14) are amended by adding "36," after "34, 35."

§ 51.60 [Amended]

31. In § 51.60, paragraph (a) is amended by adding "36," after "34, 35."

§ 51.66 [Amended]

32. In § 51.66, paragraph (a) is amended by adding "36," after "34, 35."

§ 51.68 [Amended]

33. Section 51.68 is amended by adding "36," after "34, 35,".

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

34. The authority citation for part 70 continues to read, in part, as follows:

Authority: Section 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201); section 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

§ 70.5 [Amended]

35. In § 70.5, paragraph (b)(1) is amended by changing "35" to "36."

§ 70.20a [Amended]

36. In § 70.20a, paragraph (b) is amended by changing "35" to "36."

PART 170—FEES FOR FACILITIES AND MATERIALS LICENSES AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

37. The authority citation for part 170 continues to read, in part, as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; Sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

§ 170.2 [Amended]

38. In § 170.2, paragraph (a) is amended by changing "35" to "36".

Dated at Washington, DC, this 27th day of November 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 90-28285 Filed 12-3-90; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Docket No. 46494; Notice No. 90-30]

RIN 2105-AB47

Computer Reservation System (CRS) Regulations

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is considering whether to readopt and modify its existing rules governing computer reservations systems (CRSs). The Department initiated this rulemaking because its existing CRS rules (14 CFR part 255) will expire on December 31, 1990, unless extended by the Department. The Department will be unable to complete a rulemaking on whether new CRS rules should be adopted by December 31, 1990. The Department has tentatively determined that the existing rules should be maintained until November 30, 1991, to enable the Department to complete its rulemaking on whether those rules should be renewed for a longer period and, if so, with what changes.

DATES: Comments must be submitted on or before December 14, 1990.

ADDRESSES: Comments must be filed in Room 4107, Docket 46494, U.S. Department of Transportation, 400 7th Street, S.W., Washington, DC 20509. Late filed comments will be considered to the extent possible.

FOR FURTHER INFORMATION CONTACT: Thomas Ray or Gwyneth Radloff, Office of the General Counsel, 400 7th St., S.W., Washington, DC 20509, (202) 366-4731 or 366-9305, respectively.

SUPPLEMENTARY INFORMATION:

Introduction

The Department's rules governing computer reservations systems (CRSs) operated in the United States, 14 CFR part 255, were originally adopted by the Civil Aeronautics Board (the "Board") in 1984, and by their terms will expire on December 31, 1990, unless renewed by us. (When the Board ceased to exist on December 31, 1984, most of its remaining functions, including responsibility for the rules, transferred to us.)

We began this proceeding to consider whether we should readopt those rules and, if so, whether to modify them, by issuing an Advance Notice of Proposed Rulemaking requesting comments on these issues. Advance Notice of Proposed Rulemaking, Computer Reservations Systems, 54 FR 38870 (September 21, 1989). We have received 27 comments and many reply comments and supplemental comments, representing the views of the Department of Justice, each of the U.S. carriers controlling a system (American, United, Northwest, TWA, Delta, Eastern, and Continental), one of the systems (Covia), seven other U.S. carriers (USAir, Alaska, America West, Midway, Midwest Express, Pan American, and Southwest), the two major travel agency trade associations (American Society of Travel Agents and Association of Retail Travel Agents), a large travel agency (Travel Trust International), nine foreign airlines and aviation groups (Aer Lingus, Air France, British Airways, Iberia Airlines, LTU International, Nigeria Airways, Orient Airlines Association, Scandinavian Airline System, and Varig), two foreign governmental groups (the European Civil Aviation Conference and the European Community), an independent manufacturer of CRS hardware (Megadata), and two rental car companies (Avis and Hertz).

The comments and reply comments have raised a number of issues, some of which involve difficult economic and policy questions. Only one party—Travel Trust—argues that we should have no CRS rules. The two largest vendors, American Airlines and United Air Lines, and Covia, the CRS managed by United, suggest that CRS rules are not necessary, but they would not object if we readopted the existing rules. The other U.S. and foreign airline parties, the Justice Department, the European Community, ECAC, and the two travel agency trade associations argue that CRS rules are essential for preserving airline competition and that the current rules must be strengthened significantly to protect airline competition from the anti-competitive practices of the CRS vendors.

Need for Extending the Termination Date

We will be unable to complete our rulemaking on whether the rules should be readopted, with or without changes, by December 31, 1990, the date when the rules will expire under § 255.10(b). The number and complexity of the issues raised in the rulemaking have made it impossible for us to issue an NPRM and final rules by the end of this year. Under the circumstances, we propose to maintain the current rules in force until we complete the rulemaking process. We stated in the ANPRM that we had tentatively decided to renew the rules and that some rules could require strengthening, 54 FR at 38873. Our review of the comments filed in response to the ANPRM has not changed our tentative opinion on the need to renew the rules. We also note that the Department of Justice states that we should readopt the current rules (as well as consider additional rules) and that almost all parties in the proceeding believe that at a minimum the current rules should be maintained to protect airline competition against potential competitive abuses.

In addition, a temporary extension of the current rules will preserve the status quo until we determine which rules, if any, should be adopted. Allowing the current rules to expire now would be disruptive, since the vendors, other airlines, and the travel agencies have been conducting their operations in the expectation that each vendor's operations will be consistent with the rules. Vendors, airlines, and travel agencies would be unreasonably burdened if the rules were allowed to expire and if we later determined in the rulemaking that similar rules should be adopted, since they could have changed their business methods in the meantime.

We therefore propose extending the termination date of the current rules. We have tentatively determined to change the rules' termination date to November 30, 1991. We believe that we can complete the rulemaking by that date after providing ample opportunity for parties to file comments and reply comments on a notice of proposed rulemaking.

Comments on this proposed extension of the termination date will be due 10 days after publication of this notice. After considering the comments, we will issue a final rule. We find it necessary to provide only a 10 day period for comments because any rule extending the termination date must be adopted by December 31. The short comment period should not prejudice any party, since parties have already had an opportunity to comment on the need for CRS rules by commenting on the ANPRM and since any extension of the current rules would merely maintain the status quo.

Regulatory Impact Analysis

Executive Order 12291 requires each executive agency to prepare a regulatory impact analysis for every "major rule". The Order defines a major rule as one likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment,

productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Our proposal to change the current rules' termination date to November 30, 1991, would keep in force the existing rules on CRS operations. When the Board conducted its rulemaking, it included a tentative regulatory impact analysis in its notice of proposed rulemaking and made that analysis final when it issued its final rule. We believe that analysis remains applicable to our proposal to extend the rules' expiration date and that, as a result, no new regulatory impact statement appears to be necessary. However, we will consider comments from any parties on that analysis before we make our proposal final.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (Pub. L. 96-354) is designed to ensure that agencies consider flexible approaches to the regulation of small businesses and other small entities. It requires regulatory flexibility analyses for rules that, if adopted, would have a significant economic impact on a substantial number of small business entities.

Postponing the rules' termination date to November 30, 1991, will not modify the existing regulation of small businesses. The Board's notice of proposed rulemaking contained an initial regulatory flexibility analysis on the impact of the rules, and the Board discussed the comments on that analysis in its final rule. The Board's analysis appears to be valid for our proposed extension of the rules' termination date. Accordingly, we will adopt the Board's analysis as our tentative regulatory flexibility statement and will consider any comments filed on that analysis in connection with this proposal.

Paperwork Reduction Act

This proposal will not impose any new collection-of-information requirements and so is not subject to the Paperwork Reduction Act, Pub. L. 96-511, 44 U.S.C. chapter 35.]

Federalism Implications

The rule proposed in this notice will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, we have determined that the proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 255

Air carriers, Antitrust, Reporting and recordkeeping requirements.

Accordingly, the Department of Transportation proposes to amend 14 CFR Part 255, Carrier-owned Computer Reservation Systems, as follows:

PART 255—CARRIER-OWNED COMPUTER RESERVATIONS SYSTEMS

1. The authority citation for part 255 continues to read as follows:

Authority: Secs. 102, 204, 411, 1102; Pub. L. 85-726 as amended, 72 Stat. 740, 743, 769, 797; 92 Stat. 1732; 49 U.S.C. 1302, 1324, 1381, 1502.

2. § 255.10 is revised to read as follows:

§ 255.10 Review and termination.

Unless extended, this rule shall terminate on November 30, 1991.

Issued in Washington, DC on: November 28, 1990.

Samuel K. Skinner,

Secretary of Transportation.

[FR Doc. 90-28486 Filed 11-30-90; 2:55 pm]

BILLING CODE 4910-62-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Designation of Consortium, Exchange-Visitor Program

AGENCY: United States Information Agency.

ACTION: Advanced notice of proposed rulemaking; notice of extension of time for comments.

SUMMARY: The United States Information Agency announces that it is extending the time for response to January 10, 1991 for the advanced notice of proposed rulemaking regarding the designation of consortia as sponsors of Exchange Visitor Programs found at 55 FR 46073 (November 1, 1990).

DATES: Comments in response to the notice must be submitted in writing no later than January 10, 1991.

ADDRESSES: Comments should be sent to: Merry Lymn, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 619-6829.

SUPPLEMENTARY INFORMATION: The United States Information Agency published an advanced notice of proposed rulemaking on designation of consortia at 55 FR 46073, on November 1, 1990. By that announcement, the Agency invited comments from the public which were to be submitted in writing no later than December 3, 1990. However, the Agency believes an additional 37 days is warranted. Accordingly, the deadline for submission of comments to the Agency is extended to January 10, 1991.

Alberto J. Mora,

General Counsel.

[FR Doc. 90-28344 Filed 12-3-90; 8:45 am]

BILLING CODE 6230-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD14-90-01]

Special Anchorage Area Regulations; Keehi Lagoon, Island of Oahu, HI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to enlarge the existing special anchorage area at Keehi Lagoon. The State of Hawaii plans to develop and expand Keehi Lagoon Marina which will increase the small boat usage of this area. This rule will increase the special anchorage space available to small boaters in the Keehi Lagoon.

DATES: Comments must be received on or before January 18, 1991.

ADDRESSES: Comments should be mailed to USCG Office of Aids to Navigation, Prince Jonah Kuhio Kalanianaole Federal Bldg., 300 Ala Moana Blvd., Room 9139, Honolulu, Hawaii 96850-4982. The comments and other materials referenced in this notice will be available for inspection and copying at the Office of Aids to Navigation, PJKK Federal Bldg., Room 9139, Hawaii. Normal office hours are between 6:30 a.m. and 3 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LT Michael Swegles, telephone (808) 541-2319 or FTS 551-2319.

SUPPLEMENTARY INFORMATION: Interested persons are invited to

participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identifying this notice (CGD14-90-01) and the specific section of the proposal to which the comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid in the rulemaking process.

Drafting Information

The drafters of this regulation are LT Michael Swegles, project officer, Office of Aids to Navigation, and CDR M.J. Williams Jr., project attorney, Fourteenth Coast Guard District Legal Office, Honolulu, Hawaii.

Discussion of Proposed Regulations

The State of Hawaii, Department of Transportation, has requested that Keehi Lagoon special anchorage area be enlarged. Vessels not more than 65 feet in length, when at anchor in any special anchorage area are not required to carry or exhibit the white anchor lights or sound signals required by the Navigation Rules.

A special anchorage area is established for the sole purpose of permitting smaller vessels to anchor without lights or sound signals. A special anchorage area does not affect ownership, control or use of any moorings on submerged lands.

Vessels currently anchor outside the existing special anchorage area. This proposal would allow those vessels to extinguish their anchor lights when located within the enlarged anchorage area.

The State of Hawaii plans to develop and expand the Keehi Lagoon Marina and anticipates increased small boat usage in this area. A Coast Guard decision to enlarge the special anchorage area will neither authorize nor prohibit the planned activities of the State of Hawaii in Keehi Lagoon.

This regulation is issued pursuant to 33 U.S.C. 471, 2030, 2035, and 2071 as set out in the authority citation for all of part 110.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have significant economic impact on a substantial number of small entities.

Environmental Impact

The Coast Guard has thoroughly reviewed this rulemaking and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2, of Commandant Instruction (COMDTINST) M16475.1B. A Categorical Exclusion Determination statement has been prepared and is included as part of the rulemaking docket.

Federalism Assessment

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

List of Subjects in 33 CFR Part 110

Anchorage regulations.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 110 of Title 33, Code of Federal Regulations, as follows:

PART 110—[AMENDED]

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Sec. 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.128d is amended by revising the heading and paragraph (c) to read as follows:

§ 110.128d Island of Oahu, Hawaii. (Datum: OHD)

* * * * *

(c) *Keehi Lagoon.* The waters of Keehi Lagoon bounded by a line connecting the following points:

Latitude	*Longitude*
21°19'35.0" N.,	157°54'06.0" W.,
21°19'37.7" N.,	157°53'58.0" W.,
21°19'06.4" N.,	157°53'41.9" W.,
21°19'00.8" N.,	157°53'44.1" W.,
21°18'59.9" N.,	157°53'49.7" W.,
21°19'04.9" N.,	157°53'50.0" W.,

and thence to the point of beginning.

* * * * *

Dated: November 9, 1990.

W.C. Donnell,

Rear Admiral, U.S. Coast Guard Commander 14th Coast Guard District.

[FR Doc. 90-28351 Filed 12-3-90; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3866-3]

Approval and Promulgation of Air Quality Implementation Plans; Vermont; Nitrogen Dioxide National Ambient Air Quality Standards and Prevention of Significant Deterioration Increments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a proposed State Implementation Plan (SIP) revision submitted by the State of Vermont. This revision establishes National Ambient Air Quality Standards (NAAQS) for nitrogen dioxide (NO_2) and incorporates Prevention of Significant Deterioration (PSD) NO_2 increments and related requirements. The intended effect of this action is to propose approval of a program to implement the NO_2 increments in the State of Vermont in accordance with 40 CFR 51.166 and to propose approval of the NO_2 NAAQS which were adopted in accordance with 40 CFR 50.11. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before January 3, 1991. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment, at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA, and the Air Pollution Control Division, Agency of Natural Resources, Building 3 South, 103

South Main Street, Waterbury, VT 05676.

FOR FURTHER INFORMATION CONTACT: Cherryl A. Aloi, (617) 565-3252; FTS 835-3252.

SUPPLEMENTARY INFORMATION: On September 4, 1990, the Vermont Air Pollution Control Division submitted a proposed revision to its SIP. The revision consists of the NAAQS for NO_2 and a program to implement the NO_2 increments to prevent the significant deterioration of air quality in the State of Vermont.

Background

I. NO_2 NAAQS

Pursuant to section 109 of the Clean Air Act of 1970, EPA developed and promulgated NAAQS for NO_2. Primary standards define levels of air quality which protect the public health, and secondary standards define levels which protect the public welfare from any adverse effects of a pollutant. The following NAAQS for NO_2, described in 40 CFR 50.11, were published in the **Federal Register** on November 25, 1971 and were last revised on June 19, 1985 (50 FR 25544).

Primary Standard: 0.053 ppm annual arithmetic mean

Secondary Standard: 0.053 ppm annual arithmetic mean

II. NO_2 Increments

On October 17, 1988 (53 FR 40656), EPA promulgated regulations under section 166 of the Clean Air Act (the Act) to prevent significant deterioration of air quality from emissions of nitrogen oxides (NO_x). These regulations establish the maximum allowable increase in the ambient NO_2 concentration allowed above the baseline concentration in an area. These maximum allowable increases are called "increments." The increments use NO_2 as the numerical measure because NO_2 is the pollutant on which the NAAQS for NO_x were based. In addition, NO_x emissions from stationary sources convert to NO_2 in the atmosphere. The NO_2 increment program has a three-tiered area classification system which was established by Congress in section 163 of the Act for increments of sulfur dioxide and particulate matter. Congress designated Class I areas (including certain national parks and wilderness areas) as areas of special national concern, where the need to prevent the significant deterioration in air quality is the greatest. Therefore, the increment levels in Class I areas are the most stringent. Class II increments allow for a moderate degree of growth. Class III increments allow for higher levels of industrial growth. There are no Class III areas in the country yet. (Originally, all areas not designated as Class I were designated as Class II, unless the State submitted an area to EPA for redesignation as a Class I or III area.)

The NO_2 increments for the three areas are the following:

Class I: 2.5 $\mu g/m^3$ annual arithmetic mean
Class II: 25 $\mu g/m^3$ annual arithmetic mean
Class III: 50 $\mu g/m^3$ annual arithmetic mean.

Forty CFR § 51.166 sets forth the minimum federal requirements for the PSD program. State PSD programs must meet all of these requirements. The effective date of the amendments to 40 CFR 51.166 which incorporate the NO_x increments was October 17, 1989.

Summary of Vermont's SIP Revision

The Agency of Natural Resources (ANR) has proposed to adopt changes to its regulations which incorporate the primary and secondary NAAQS for NO_2, the PSD NO_2 increments, and related requirements. On September 4, 1990, EPA received these SIP revisions for parallel-processing.

The State is proposing changes to the "Vermont Air Pollution Control Regulations Approved in SIP." The changes are being made to section 5-104 "Definitions," section 5-301 "Scope of Air Quality Standards," section 5-309 "NO_2 Primary and Secondary Standards," and Table 2 "PSD Increments." In addition, the State amended its New Source Review (NSR) SIP narrative entitled "The State of Vermont Air Quality Implementation Plan." Vermont proposed these revisions on the state level and held a public hearing on September 25, 1990.

EPA's review of this material indicates that these revisions are, with the exceptions noted below, equivalent to, or in some instances, more stringent than, the requirements in 40 CFR 51.166. Vermont's program for NO_2 standards, PSD increments and EPA's evaluation are detailed in a memorandum dated November 16, 1990, entitled "Technical Support Document—Vermont Prevention of Significant Deterioration (PSD) Nitrogen Dioxide (NO_2) Increment Regulations and NO_2 National Ambient Air Quality Standards (NAAQS)." Copies of this memorandum are available, upon request, from the EPA Regional office listed in the **ADDRESSES** section of this notice.

Changes Necessary Prior to Final Rulemaking

The Vermont ANR must make specific changes to its regulations and narrative before final approval of this SIP revision. The ANR must amend the reference method by which compliance with the NO_2 standards is measured to make it consistent with that stated in 40 CFR 50.11. The ANR also must amend its NSR narrative to clarify the minor source and major source baseline dates for NO_2. This will help explain how increment consumption will be calculated. In addition, the ANR should commit to develop a NO_x emissions inventory and determine increment consumption for the transition period between February 8, 1988, and the effective date of Vermont's regulations. Finally, the ANR must commit to correcting an increment violation within 60 days in accordance with 40 CFR 51.166(a)(3).

EPA is proposing to approve this Vermont SIP revision, submitted on September 4, 1990, which establishes ambient air quality standards for NO_2 and PSD increment levels for NO_2, provided the ANR addresses the necessary changes listed above. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

This revision is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the state's procedures for amending its regulations. If the proposed revision is substantially changed in areas other than those identified in this notice, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by Vermont and submitted formally to EPA for incorporation into the SIP.

Proposed Action

EPA is proposing to approve changes to section 5-104 "Definitions," section 5-301 "Scope of Air Quality Standards," section 5-309 "NO_2 Primary and Secondary Standards," and Table 2 "PSD Increments" of the "Vermont Air Pollution Control Regulations." In addition, EPA is proposing to approve the new source review narrative changes to "The State of Vermont Air Quality Implementation Plan."

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

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

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

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: November 25, 1990.

Paul Keough,

Acting Regional Administrator, Region I.

[FR Doc. 90–28410 Filed 12–3–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 32, 36, 64 and 69

[CC Docket No. 90–571; FCC 90–376]

Telephone Communication by Hearing and Speech Impaired

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) seeks comments on proposed amendments to parts 0 and 64 of the rules of the Federal Communications Commission (FCC). Moreover, as explained in paragraph 19 of NPRM, we ask interested parties to comment on additional changes in the rules which they believe are needed, including parts 32, 36 or 69, and to recommend schedules and procedures for implementing such proposed changes. This proceeding is initiated pursuant to requirements of the Americans with Disabilities Act of 1990 (ADA). The amendments are intended to provide the nation's 26 million hearing and speech impaired with telephone services functionally equivalent to those provided to hearing individuals.

DATES: Written comments must be received by the FCC on or before January 15, 1991, and reply comments on or before February 15, 1991. The requirements for filing comments in a proposed rulemaking proceeding are contained in §§ 1.415 and 1.419 of FCC rules. Additionally, questions on how to file comments may be directed to the FCC's Consumer Assistance and Small Business Division, (202) 632–7000.

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

FOR FURTHER INFORMATION CONTACT: Abraham A. Leib, Chief, Domestic Services Branch, Common Carrier Bureau, (202) 634–1816.

SUPPLEMENTARY INFORMATION: The complete text of the NPRM, and pertinent changes to the Communications Act and proposed changes to FCC rules, is made a part of this notice.

The following collection of information contained in the proposed rules has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from International Transcription Service, 2100 M St., NW., suite 140, Washington, DC 20037, (202) 857–3800. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3785. Copies of comments made should also be sent to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554. For further information, telephone Judy Boley, FCC, (202) 632–7513.

OMB number: None.

Title: Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals, and the Americans with Disabilities Act of 1990 (CC Docket No. 90–571).

Action: New collection.

Respondents: State governments, individuals or households.

Frequency of response: On occasion.

Estimated annual burden: The following estimates pertain to the reporting requirements proposed in the NPRM: 50 responses, 8,000 hours total; 160 hours average burden per response for state certification application; 20 responses; 4,800 hours total; 240 hours average burden per response for complaints.

Needs and uses: The proposed rule amendments are designed to implement certain provisions of the ADA, and also to solicit comments on procedures for certifying sate programs and for filing complaints filed. Those affected are states seeking certification of their programs, and any member of the public who wants to file a complaint against a specific carrier or carriers.

Authority: Sections 1, 4 (i)–(j) 225, 403 and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154 (i)–(j), 225, 403 and 410; and 5 U.S.C. 553.

The following represents the contents of the NPRM issued by the Commission:

Notice of Proposed Rulemaking

In the Matter of Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals, and the Americans with Disabilities Act of 1990.
Adopted November 8, 1990.
Released November 16, 1990.

I. Introduction

1. This proceeding is initiated because of the passage of the Americans with Disabilities Act of 1990 (ADA), S. 933, Public Law 101–336, 104 Stat. 327, 366–69 (1990). The ADA's purpose is "to provide a clear and comprehensive national mandate to end discrimination against individuals with disabilities and to bring persons with disabilities into the economic and social mainstream of American life; to provide enforceable standards addressing discrimination against individuals with disabilities, and to ensure that the Federal government plays a central role in enforcing these standards on behalf of individuals with disabilities." [1] Title IV of the ADA adds new section 225 to the Communications Act of 1934, as amended, 47 U.S.C. 151 *et seq.*, (the Act), and amends existing section 711.[2] Section 225 requires the

[1] S. Rep. No. 116, 101st Cong., 1st Sess. 2 (1989) (S. Rep.); H.R. Rep. No. 485, 101st Cong., 2d Sess. 31 (1990) (H.R. Rep.). See Appendix A.

[2] Section 711 is amended to require that any public service announcement, either partially or wholly funded by the federal government, shall include closed captioning of the verbal content of the announcement. It also states that a television broadcast licensee shall not be required to supply closed captioning for any such announcement that does not include closed captioning. Unless the licensee intentionally fails to transmit the closed caption that was included in the announcement, the licensee shall not be held liable for broadcasting any such announcement without transmitting a

Continued

Commission to promulgate regulations in furtherance of the purposes of the ADA.[3]

2. The Act mandates that communications services be "[made] available, so far as possible, to *all* the people of the United States * * *." 47 U.S.C. section 151 (emphasis added). Many of the nation's 26 million hearing and speech impaired are unable to access fully the nation's telephone system; for them universal service has not been achieved.[4] The intent of title IV of the ADA is to further the Act's goal of universal service by providing to hearing and speech impaired individuals telephone services that are functionally equivalent to those provided to hearing individuals. To accomplish this, new section 225 imposes on all common carriers providing interstate or intrastate telephone service an obligation to provide to hearing and speech-impaired individuals telecommunications services that enable them to communicate with hearing individuals.[5] The ADA requires the Commission to establish functional requirements, guidelines, and operational procedures for relay services, and to establish minimum standards that shall be met in carrying out the requirement that common carriers provide telecommunications relay services. The Commission's regulations are to require that telecommunications relay services operate every day for 24 hours per day, require that users of telecommunications relay services [6] pay rates not greater than rates paid for functionally equivalent voice communications services, prohibit relay operators from refusing telecommunications relay service calls or limiting their length, prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of such conversations beyond the duration of the call, and prohibit relay operators from intentionally altering a relayed conversation. 47 U.S.C. 225(d)(1). In addition, the Commission must ensure that its regulations' use of existing technology does not discourage or impair the development of improved technology. 47 U.S.C. 225(d)(2). The Commission also is charged with prescribing regulations governing the jurisdictional separation of costs for the services provided pursuant to section 225, subject to certain conditions; resolving complaints alleging violation of section 225; and certifying state programs for intrastate telecommunications relay services. 47 U.S.C. 225 (d)(3), (e), (f). The proceeding will culminate in the issuance of regulations that establish functional standards for the provision of telecommunications relay services.

II. Background

3. The Commission has considered the need for relay services even before passage of the ADA. In CC Docket No. 87–124, the Commission sought public comment concerning the telecommunications needs of the hearing impaired and other disabled persons, to evaluate the need for regulatory measures or legislative initiatives to ensure reasonable access to telecommunications services by those persons.[7] The Commission considered a variety of issues in the Notice, including the Commission's jurisdiction to order an interstate relay system, if it found one is necessary, options on how it should be provided, options for recovering its costs, and other issues such as standardization of the TDD signalling format, the feasibility of developing packet switched services to provide low cost connectivity for TDD users and the need for an advisory committee to address the needs of the disabled.

4. In the subsequent Order Completing Inquiry and Providing Further Notice of Proposed Rulemaking (Further NPRM), 4 FCC Rcd 6214 (1989), the Commission found, *inter alia*, that an interstate TDD relay service is necessary to provide reasonable access to telephone service to the hearing and speech impaired. It proposed for comment two alternative plans designed to accommodate interstate TDD relay service. The first would require interexchange carriers (IXCs) which have more than 0.05 percent of presubscribed lines to separately or jointly provide the service. Under this plan, the carriers would be permitted to recover their costs through charges for other interstate services. The alternative plan called for the National Exchange Carrier Association (NECA) to assume the responsibility for implementation and operation of the system. Funding for this plan would be covered by an assessment on IXCs, *i.e.*, those meeting the 0.05 percent presubscribed line criterion, based on each carrier's number of presubscribed common lines, and adding those costs to the Universal Service Fund costs.[8] In either case, there would have been no additional charge for users of the interstate TDD relay service beyond the normal end-to-end toll charges of the serving carrier.

5. In the Further NPRM, the Commission reached conclusions on several matters raised in the Notice. It concluded, for example, that standardizing the TDD signalling format [9] is unwarranted. It said that the ASCII format "would impose an unnecessary burden on owners of the Baudot devices." Further NPRM at 6225–26. This is particularly so, it noted, in view of the ability of existing relay centers to accept signals in either format, and the common ability of ASCII machines to accept Baudot. The Commission also decided that packet switching for TDD users has not been identified as a technology warranting Commission action. The Further NPRM also concluded that a formal, Commission-sponsored advisory committee is unnecessary to address the needs of the disabled. Further NPRM at 6231.

6. The provisions of the ADA, which was enacted after comments to the Further NPRM were filed with the Commission, have rendered much of the record in CC Docket No. 87–124 inapplicable. Issues raised by the Commission in CC Docket No. 87–124 concerning TDD relay services have been supplanted by the provisions of the

closed caption. *See* H.R. Rep. at 70. The legislation does not instruct the Commission, and we do not believe it necessary, to promulgate rules under this amendment. Any licensee violating section 711 would be subject to enforcement action. *See, e.g.*, 47 U.S.C. 503. Section 711 therefore will not be discussed further herein. In addition to adding section 225 and amending section 711, the ADA makes conforming amendments to sections 2(b) and 221(b).

[3] *See* section 225(d).

[4] H.R. Rep. at 34.

[5] *See* Appendix A, sections 225 (a)(3) and (c).

[6] "Telecommunications relay services" means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. This term includes services that enable communications between the user of a TDD or other nonvoice terminal device and an individual who does not use such a device. The term "TDD" means a telecommunications device for the deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system. 47 U.S.C. 225(a) (2), (3).

[7] Notice of Proposed Rulemaking and Further Notice of Inquiry, CC Docket No. 87–124, 3 FCC Rcd 1982 (1988) (Notice).

[8] *See* Third Report and Order in CC Docket No. 78–72, Phase I, 93 FCC 2d 241 (1983); Further NPRM at 6225.

[9] Baudot and ACSII formats are currently used among TDD users. Because the speeds and coding schemes are different, conversion is required to allow a Baudot TDD to "talk to" and ASCII machine, and vice versa.

ADA. In the sections that follow, the record of CC Docket No. 87–124 will be included to the extent it may be of help in formulating proposals to implement the statutory requirements of the ADA.[10]

III. Proposed rules

7. Section 225(c) of the ADA requires that carriers providing telephone voice transmission services provide telecommunications relay services (TDD service) within three years of the date of enactment of title IV of the ADA, *i.e.*, July 26, 1993.[11] Carriers are to offer to hearing-impaired and speech-impaired individuals telephone transmission services which are functionally equivalent to telephone services provided to hearing individuals, including providing services within the same geographic radius that they offer to hearing individuals.[12] Carriers may provide such services individually, through designees, through a competitively selected vendor, or in concert with other carriers, but it is carriers that are responsible for compliance. Although carriers are provided considerable discretion as to how they provide the service, there is no provision in the statute for waiver of the requirement.[13]

8. Section 225(a)(1) of the ADA defines common carrier for purposes of telecommunications services for hearing-impaired and speech-impaired individuals as including the definition currently contained in section 3(h) of the Act "and any common carrier engaged in intrastate communication by wire or radio * * *." The commission's jurisdiction under the ADA, therefore, extends to all telephone companies and their compliance with their statutory obligations under section 225(b)(1), to provide to hearing the speech impaired individuals telecommunications services that enable those individuals to communicate with hearing individuals. Although the Commission's jurisdiction is over all common carriers, states may seek to establish that intrastate relay services satisfy federal requirements by applying to the Commission for certification. If a state system is certified by the Commission, a state retains jurisdiction over such intrastate systems. The Commission retains jurisdiction over intrastate systems where a state has not been certified or when certification has been revoked. Interstate carriers, and interstate carriers in states who have not been certified, must comply with the Commission's regulations. Intrastate carriers in states that have been certified must provide intrastate TDD service in compliance with the program certified under section 225(f) for that state. The definitions, jurisdictional statement, and essential service requirements of section 225 are set forth in proposed § 64.605 (a), (b) and (c) of the rules.

9. Section 225(d) of the ADA requires the Commission to prescribe the necessary rules and regulations to carry out the requirements of title IV, within one year of that ADA's enactment. Subsection (d)(1)(A) requires the Commission to establish functional requirements, guidelines, and operational procedures for the provision of telecommunications relay services. One of the requirements of the ADA is that all common carriers subject to the ADA must provide TDD services on a nondiscriminatory basis to all users in their telephone service areas. The Commission is under a mandate to pursue means to meet this goal in the most efficient manner.[14]

10. As an initial matter, we believe it would be premature at this time to prescribe how carriers meet their responsibilities under the ADA. Section 225 provides carriers discretion as to whether service is provided individually, jointly, or through designees, and they must have time to evaluate which approach is best. Moreover, more than 17 state sanctioned systems are in operation, some of which offer an interstate calling capability, and state authorities need time to consider what modifications should be made in view of the ADA. Although the Commission ultimately may need to prescribe a structure, doing so at this time would be inconsistent with the statutory design to permit carriers and states time to determine how to comply with the Commission's rules.

11. In response to the ADA's directives concerning functional requirements, guidelines and operational procedures, we propose that operators of TDD relay systems should be sufficiently trained to meet the specialized communications needs of individuals with hearing and speech impairments, including sufficient skills in typing, grammar and spelling. Additionally, operators should be trained in deaf culture and TDD etiquette, and should be able to interpret typewritten American Sign Language and transliterate it to spoken English, and vice versa. Further, the relay systems should include adequate staffing to provide callers with reasonably efficient access,[15] and on request operators should retry calls that are initially busy. Finally, operators should be prepared to handle emergency calls from disabled callers. Accordingly, we propose § 64.605(d)(1)(i) which will require relay systems to operate with sufficient trained personnel. Interested parties are invited to comment on the language of this proposal, and to offer additional functional requirements, guidelines and operational procedures for telecommunications relay services. Interested parties are also invited to propose analogous standards or amendments to accommodate systems that are automated, *i.e.*, systems that do not require the intervention of an operator to provide translation between audio and video.[16] Parties should explain how such systems are "functionally equivalent" to systems provided to voice users.

12. Section (d)(1)(B) of the ADA requires the Commission to establish minimum federal standards to be met by

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[10] Parties commenting on issues raised in response to this Notice of Proposed Rulemaking are requested not to rely upon or incorporate by reference submissions filed in CC Docket No. 87–124, but instead to file new, complete pleadings.

[11] The President signed Public Law 101–336 on July 26, 1990. In this order and in the rules the terms telecommunications relay services, TRS, TDD relay service and TDD service are used synonymously because today relay services rely on oral translation of TDD transmissions. *See* note 6, *supra*. The ADA makes clear, however, that the regulations we are adopting are not to impair the development of new technology. 47 U.S.C. 225(d)(2).

[12] Audiotext services, which connect callers to recorded information services, are not intended to benefit from the ADA. *See* H.R. Rep. at 68. Parties are asked to comment on what rules, if any, should be adopted relating to audiotext and other interactive services.

[13] Subpart F of part 64 of the Commission's Rules, Furnishing of Customer-Premises Equipment and Related Services Needed by Persons with Impaired Hearing, Speech, Vision or Mobility, appears the most logical place to put rules implementing the ADA. The proposed rules are attached hereto as appendix B.

[14] S. Rep. at 81.

[15] Some state guidelines for intrastate systems have such requirements. *See, e.g.*, Standards of Service for Telephone Utilities, 83 Ill. Adm. Code part 756. *See also* discussion regarding network blocking and congestion, *infra*, para. 12.

[16] Conversion of computer stored text to human-like speech is called text-to-speech. Although automated systems have the potential of providing relay services in an efficient manner, there is no evidence before us showing such automated systems currently could satisfy the requirements of title IV. For example, the technology to correct errors and abbreviations is imperfect and, according to AT&T, will be several years in development. AT&T Letter To Honorable Edward J. Markey, October 4, 1989. Fon-ex operates a computer system that permits "conservation" between any DTMF (tone dialing) telephone and a TDD. The telephone is used to spell words, with contextual adjustment performed by the intervening computer. Such a system permits an unimpaired individual to communicate with a person using a TDD, though possibly more slowly than through an operator. Speech to text conversion also is under study

all providers of intrastate and interstate telecommunications relay services including technical standards, quality of service standards, and the standards that will define functional equivalence between telecommunications relay services and voice telephone transmission services. *See also* S. Rep. at 81. The objective is to ensure that telephone service for hearing-impaired and speech-impaired individuals is functionally equivalent to voice service offered to hearing individuals. Factors that we will include in our proposed rule § 64.605 to achieve the goal of section (d)(1)(B) are the requirements that TDD systems transmit messages between the TDD and voice caller in real time, that blockage rates for TDD services be no greater than standard industry blockage,[17] and that users have access to their chosen interexchange carrier to the same extent access is provided to voice users. Appendix B at 64.605(d)(1)(ii). We do not propose to adopt a single signal format. The Commission discussed standardizing TDD signalling format in the Further NPRM, (para. 5, *supra*), but that approach was not supported in the record. Further NPRM at 6225–26. While ASCII offers a higher data transfer rate, not all TDD users have compatible equipment, relying instead on Baudot code equipment. However, Baudot and ASCII formats are the standard signalling formats in use now by TDD users. We will propose, as we did in the Further NPRM, to require that TDD relay systems be capable of communicating with either format.[18] Interested parties are invited to propose other standards that will define functional equivalence between TDD relay services and voice telephone services.

13. Section 225(d)(1)(C) requires that TDD relay services operate every day for 24 hours a day. A similar proposal was offered in the Further NPRM with regard to an interstate TDD relay system and no party expressed opposition. Under the ADA, the requirement for all intrastate TDD relay systems also would reflect the 24 hour, seven days a week availability of service. A small intrastate carrier might consider the costs of operating such a system to be prohibitive if it has few disabled subscribers in its service area. Although the ADA provides no exceptions to its requirement that every voice carrier provide TDD relay service, carriers are free to enter into joint arrangements. In a state that has certified its TDD relay program under section 225(f), the carrier will be subject to the operating and funding requirements of section 225(d) through the state program. It is likely states will consider the variety of carriers under their jurisdiction and will seek to minimize hardships on small carriers in implementing effective, efficient, intrastate relay systems. A carrier in a state that has not certified a TDD relay program with the Commission is still required to comply with the requirements of section 225(d), which include operating standards, but we encourage carriers to consider joint operations so that service can be provided as efficiently as possible. It would be premature at this point to compel small carriers to enter into federally structured joint arrangements, although ultimately some action along that line may be necessary. For now, we leave it up to the carriers to develop effective, efficient relay systems consistent with our rules and the ADA. We only propose that subsection (d)(1)(C) of § 64.605 of the rules require that all TDD relay services operate in accordance with the standard established by section 225(d)(1)(C) of the ADA. We also propose to require that TDD relay systems be designed to permit operation during power outages. Interested parties are asked to comment on this proposal.

14. Subsection (d)(1)(D) of section 225 requires that users of TDD relay services pay rates no greater than the rates paid for functionally equivalent voice communication with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination. As was noted in the Further NPRM, TDD relay calls consist of two primary additional elements: (1) Communications links between the relay center and the caller and called party and (2) the relay center. The Commission stated that requiring relay users to pay the relay center costs would act as a deterrent to use of the service because the full cost of a relay call could be as much as $9.20 for an average call. Further NPRM at p. 6222. The Commission proposed that the added cost of providing interstate relay service be recovered from sources other than relay service users, so that users would pay a charge equal to the tariffed rates of non-relay calls between the same locations of the interexchange carrier providing the communications links for the relay service. Parties commenting in response to this proposal did not oppose the notion of direct call equivalence, *i.e.*, functionally equivalent communication services.[19] Proposed § 64.605(d)(1)(iv) of the rules reiterates the mandate of section 225(d)(1)(D) that carriers' charges for TDD relay service not exceed charges for functionally equivalent voice service between the same end points, without regard to how the call is routed.

15. Section 225(d)(1)(E) prohibits relay operators from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use TDD relay services. By this provision relay operators appear required to handle any type of call provided by carriers, *e.g.*, non-coin sent-paid,[20] third party number, calling card and collect calls.[21] Interested parties are asked to submit comments in response to proposed § 64.605(d)(1)(E).

16. Section 225(d)(1)(F) prohibits relay operators from disclosing the content of any relayed conservation and from keeping records of the content of any such conversation beyond the duration of the call. It is noted by the Senate Report that while records have to be made to complete a call no such records of the content of the call should be

[17] AT&T, for example, designed its hierarchical network so that the overall probability of a caller encountering a trunk busy was no more than one percent. Now, it measures congestion in its dynamic non-hierarchical network by more complex criteria. We do not propose a specific network congestion criterion, but we will propose a general standard that reflects overall network congestion performance. Following standard performance criterion for intrastate TDD systems, we will also propose a specific standard for TDD system answering, *viz.*, that at least 85% of calls to the TDD system must be answered within ten seconds. *See* AT&T Letter to New Jersey Board of Public Utilities, July 27, 1990. To assure that TDD users are not then simply put on hold, we will require that relay service begin within 30 seconds of answering.

[18] H.R. at 68, appendix Bat § 64.605(d)(1)(ii).

[19] Generally, transmitting a given message via a TDD relay system will take longer than by normal voice means. This may effectively result in some TDD relay calls taking longer and therefore costing more than an equivalent voice call communicating the same message. However, no reliable calculus has been offered to measure the average disparity in calling times. Moreover, the term "functional equivalence" in section 225(d)(1)(D) normalizes this disparity by definition. The ADA requires TDD relay call rates not to be greater than functionally equivalent voice calls on the basis of call duration, time of day or distance—not message content. However, neither the Commission nor Congress opposed implementation of rate discounts. S. Rep. at 82 (intrastate); Further NPRM at 6222 (interstate).

[20] Non-coin sent-paid calls are generally considered to be calls paid for via credit cards.

[21] There are various ways TDD relay systems might operate. Access to a TDD relay center could be offered via a toll-free telephone number and the charges for the call handled through or by the center. Alternately, the local carrier or IXC could intercept the originating call for credit card verification or other administrative operations, or the carrier could automate call processing operations. A center—or carrier—that checks credit and declines to complete the originator's call on the basis of a declined credit authorization would not appear to violate the call refusal prohibition of section 225(d)(1)(E) because a similar call not using the relay service would not be completed. Commenters are invited to offer their views on this or other anomalous possibilities.

retained after the call has been terminated.[22] One adjunct to real-time TDD relay operation is "store and forward" service. By this service, if the destination telephone number is busy when the disabled person makes his or her initial call through the TDD relay operator, the operator will deliver the message at a later time when the destination telephone is no longer busy. Under these circumstances, it would seem that a stored and forwarded call is, for purposes of subsection (d)(1)(F), not completed and the prohibition against "keeping records of the content * * * beyond the duration of the call" would not apply until the message is finally delivered.[23] Were delivery not possible, under reasonable criteria established by the relay center, the originating caller would be notified and the message destroyed, typically by deleting it from the relay center's computer memory. Our proposed § 64.605(d)(1)(vi) includes only the language offered by the ADA provision, but parties are invited to offer additional language to clarify the intent of the section as discussed herein.

17. Section 225(d)(1)(G) prohibits relay operators from intentionally altering a relayed conversation. This requirement raises a number of potential problems. First, there may be times when summaries are reasonably necessary and these should not violate the prohibition of subsection (d)(1)(G). For example, the Senate Report recognizes that some recorded messages cannot necessarily be transcribed in full due to speed limitations in the dispatching TDD and the operator's typing ability, in which case the hearing or speech impaired individual should be given the option to have the message summarized.[24] However, should the customer choose not to accept a summarized version of the message, the operator apparently would have to be facile with shorthand or have access to a tape recorder to transmit the message in full. Offering this option, therefore, could impose an unnecessary and unreasonable burden on operators. An alternative would be to permit operators to summarize the content of recorded messages if reasonably necessary by message length or content. We ask interested parties to comment on this matter and to provide anticipated costs and benefits in support of their positions. The purpose of the section is to assure that the relay operator, to the extent reasonably possible, serves as a transparent conduit between two people communicating through disparate modes, and we believe operators must be provided reasonable discretion in meeting that responsibility. A second issue that arises by this process is the responsibility of the relay operator to repeat language or expressions that are either abhorrent to his or her sensibilities or convictions or are otherwise violative of state or federal law, *e.g.*, those that are obscene or involve criminal activity that the operator would wish to report to authorities. Our view is that Congress has mandated that relay operators may not intentionally alter a relayed conversation, no matter what that conversation contains, or reveal its contents. Interested parties are invited to comment on this issue and to submit their views on proposed § 64.605(d)(1)(G), which follows the language of ADA section 225(d)(1)(G).

18. Section 225(d)(2) requires the Commission to ensure that regulations prescribed to implement title IV of the ADA encourage the use of state-of-the-art technology and do not discourage or impair the development of improved technology. As note, *supra*, the Commission considered in the Notice the feasibility of developing packet switched services based on new or existing packet switched networks to provide low costs connectivity to TDD users. Notice at 1988. However, the record in response to this issue was insufficient to reach a conclusion, though one party did describe a service which, it asserted, would permit use of compatible equipment on a circuit switched or packet switched basis through the use of modems and PCs.[25] Other technologies, such as those utilizing text-to-speech and voice recognition concepts, may eventually represent alternatives to relay centers. The Commission will remain receptive to petitions for rulemaking to modify the rules to be adopted in this proceeding that offer technological advancements more efficiently fulfilling the objectives of the ADA. Proposed § 64.605(d)(2) is intended to reflect the intent of section 225(d)(2).

19. Section 225(d)(3)(A) requires the Commission to prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to title IV of the ADA, consistent with the provisions of section 410 of the Act. The legislative history establishes that "No change to the procedures for allocating joint costs between the interstate and intrastate jurisdictions as set forth elsewhere in the Communications Act of 1934 is intended." [26] The Commission, under section 410(c) of the Act, must refer "any proceeding regarding the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations, which it institutes pursuant to a notice of proposed rulemaking" to a Federal-State Joint Board.[27] Section 410 also authorizes the Commission to "refer any other matter, relating to common carrier communications of joint Federal-State concern" to a Joint Board. A Joint Board may not be necessary if state relay systems operate independently of an interstate relay system, *i.e.*, under circumstances in which there are no jointly used resources. Conversely, carriers conceivably could elect to enter into a single relay system which provides inter- and intra-state relay service throughout the country. Moreover, the ADA, through section 225(a)(1) and relevant legislative history,[28] expands the range of services and carriers responsible for providing relay services beyond those normally subject to separations procedures. These include resale carriers, cellular radio carriers, and all other carriers which provide voice-band telecommunications services.[29] We ask interested parties to consider the extent to which the ADA, Section 410 of the Act and current accounting and jurisdictional separations regulations apply to the panoply of carriers currently offering voice services, to comment on changes needed in the rules in this regard, if any, including parts 32, 36 or 69, and to recommend schedules and procedures for implementing any proposed changes, considering the time limitations contained in the ADA.[30] Our proposed § 64.605(d)(3)(i) sets forth the basic requirement that appears in the ADA with regard to jurisdictional separations.[31] Parties may comment on

[22] S. Rep. at 82.

[23] We seek comment on this analysis.

[24] S. Rep. at 82.

[25] Further NPRM at 6226. The Commission noted that the service suggested did not differ from current capabilities of modem-equipped PCs to communicate directly with TDDs in the ASCII format. *Id.* at n. 31.

[26] S. Rep. at 82.

[27] 47 U.S.C. 410.

[28] See also discussion in para. 20, *infra*.

[29] We ask interested parties to include such carriers in their analyses of the matters discussed in this section.

[30] We will refer the matter to a Joint Board if it appears that changes in our jurisdictional separation rules are necessary or appropriate.

[31] Of course, the rule we finally adopt may be different from our proposal. We are providing notice that we may adopt a final rule that implements our decision with regard to these issues.

this proposal or offer any other language that supports the intent of the ADA. Such new proposals should be supported with data, where appropriate, and detailed rationale.

20. Section 225(d)(3)(B) states, *inter alia*, that the Commission's "regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service." The ADA contemplates that the Commission's regulations will ensure that all subscribers to every telephone common carriers' interstate service, including private line, public switched network services, and other common carrier services, will contribute to recover the costs incurred in the carrier's provision of interstate relay services.[32] In its further NPRM, the Commission sought comment on two mechanisms for financing an interstate TDD network, one requiring IXCs to recover costs through charges for other interstate services, and the other implemented through NECA which would recover the costs through a line charge to interexchange carriers. *See* para. 4, *supra*.

21. The ADA has fundamentally broadened the relay services addressed earlier to include intrastate services, and instructs that interstate relay services should be supported by subscribers to all interstate services. The record in response to the Further NPRM no longer adequately addresses the matter of funding TDD relay systems. Nevertheless, it remains possible that mechanisms similar to those proposed earlier or one implemented through NECA or another industry organization, could achieve the intent of Congress. We ask interested parties to comment on precisely what additional detail, if any, may be necessary in Commission rules relating to cost recovery. We ask such commenters to analyze the extent to which these or other proposed mechanisms distribute costs as required by the ADA, and to provide anticipated cost figures for the first five years of TDD relay system operation.[33]

22. Section 225(d)(3)(B) provides that a state which has a program certified under section 225(f) shall permit its commission to allow a common carrier to recover the costs incurred in providing intrastate telecommunications relay services by a method consistent with the requirements of title IV. Our proposed § 64.605(d)(3)(ii) requires, *inter alia*, that the costs for TDD relay service provided by interstate carriers will be recovered from all subscribers for every interstate service, and costs caused by intrastate TDD relay services will be recovered from the intrastate jurisdiction. This language follows the approach outlined by the ADA, but, as discussed in the previous paragraph, we ask interested parties to comment on alternatives to cost recovery that are consistent with the ADA and the Act.

23. Section 225(e) addresses the matter of enforcement of the ADA. Section 225(e)(1) requires that the Commission enforce the requirements of the ADA subject to subsections (f) and (g). Subsection (f) refers to the certification of state programs, and subsection (g) provides for Commission resolution of complaints concerning the ADA. The purpose of section 225(e)(1) is to assure that the Commission has adequate enforcement authority to ensure that TDD relay services are provided nationwide and in every state and that certain minimum federal standards are met by all providers of the services. The Commission's enforcement authority over the provision of intrastate TDD relay services is limited in states with programs certified under procedures required to be established under subsection (f). The ADA requires that state commissions permit common carriers to recover the costs incurred in providing intrastate TDD relay services if the carrier meets the requirements of the state's certified program. In states without such a program, the ADA requires state commissions to permit the recovery of costs as long as the carrier complies with the Commission's regulations adopted pursuant to section 225(d). Section 225(e)(2) requires the Commission to resolve a complaint alleging a violation of § 64.605 within 180 days after the complaint is filed. Subsections (e) (1) and (2) are reflected in proposed § 64.605(e). *See* appendix B.

24. Sections 225 (f)(1) and (f)(2) describe the state certification procedure by which states may apply to assert jurisdiction over the provision of intrastate TDD relay services. The Commission may grant certification on a showing that these services comply with the federal guidelines and standards adopted pursuant to section 225(d) of the ADA. A state plan may make service available through the state governments, through designees, through a competitively selected vendor, or through regulation of intrastate carriers. To obtain certification, a state must submit documentation to the Commission that includes procedures and remedies for enforcement. This is to assure that states with certified plans will exercise their responsibility to enforce the provisions of Title IV of the ADA in their jurisdictions.[34] Section 225(f)(3) states that, except as provided by rules promulgated pursuant to Section 225(d) of the ADA, the Commission may not refuse to certify a state program based solely on the method that state chooses to fund implementation of intrastate TDD relay services.[35] Section 225(d), however, would require that a state program not include cost recovery mechanisms that would have the effect of requiring users of TDD relay services to pay higher rates than those paid for functionally equivalent voice communications services. *See* ADA sections 225 (d)(1)(D) and (d)(3)(B). We propose certification procedures in appendix B, at proposed § 64.605(f). The House Report notes that TDD relay services are of benefit to all in society and it therefore "would expect that any funding mechanism not be labeled so as to prejudice or offend the public, especially the hearing-impaired and speech-impaired community." [36]

25. By section 225(f)(4), the Commission may suspend or revoke a state's TDD relay service certification if, after notice and opportunity for hearing, it determines that certification is no longer warranted. In a state whose program has been suspended, the Commission is expected to provide a reasonable transition period to ensure continuity of TDD relay service for users and a reasonable opportunity for carriers to meet the requirements of the Commission's regulations after the suspension or revocation. Proposed § 64.605(f) contains the provisions of ADA section 225(f). Interested parties are invited to offer comments on these

[32] H.R. Rep. at 68–69. This language does not preclude joint inter-, intra-state systems. The House Report specifically states the Commission "is granted broad discretion to structure a cost recovery mechanism to determine the most appropriate method of recovery of interstate and intrastate costs."

[33] Interested parties are also asked to provide suggestions on how TDD relay system charges should be distributed among services and how much users should be charged. All such charges, we note, must be accurate and otherwise compliant with the Act. *See, e.g.*, sections 201–05 of the Act.

[34] H.R. Rep. at 69.

[35] A number of state systems, such as that in Kansas, offer residents an outgoing interstate calling capability. It would be valuable to have analyses of whether cost recovery mechanisms used for these systems are consistent with the ADA or, if not, what modifications would be necessary. *See also* n. 32, *supra*.

[36] *Id.* at 69, 70. It further states:

For example, California's relay service is funded by a surcharge that appears on telephone bills as 'Deaf Trust Fund.' This unfortunate choice of words is offensive and should be precluded.

proposals and to include any additional language they deem appropriate.

26. Section 225(g) states that when a complaint is filed with the Commission alleging a violation of title IV of the ADA with respect to intrastate TDD service within a state that has a certified program under section 225(f) in effect, the Commission must refer the complaint to the state. If the state has not been certified, the Commission will handle the complaint pursuant to sections (e)(1) and (e)(2). Once a complaint has been referred to the state, the Commission will exercise jurisdiction only if the state has not taken final action within 180 days, or shorter period if the state so requires, or if the Commission determines that a state program no longer qualifies for certification under section 225(f). Our proposed § 64.605(g) reflects these provisions. We propose to follow procedures patterned after those in Rule § 68.400.

IV. Conclusion

27. The regulations we propose in this proceeding are intended to implement the provisions of title IV of the ADA. Interested parties filing comments are invited to offer alternative language, additional provisions or any other suggestions that will foster the intent of Congress to bring functional telecommunications equality to the hearing and speech-impaired of our nation. Many states already have relay systems in operation with various levels of carrier participation. We especially solicit comment from those who have experience with these systems. We hope to avoid problems experienced by others and to benefit from their success. In the final report and order that will follow, the Commission will adopt regulations that it believes best, and most efficiently, achieves the objectives of the ADA.

V. Initial Regulatory Flexibility Analysis

28. In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. section 601, the Commission issues the following initial regulatory flexibility analysis:

A. Action Contemplated and Reason for Action

29. By this Notice of Proposed Rulemaking, the Commission seeks to elicit comment on a series of proposals to implement title IV of Public Law 101-336, the Americans with Disabilities Act of 1990, which requires all common carriers to provide telecommunications relay services in order to provide hearing and speech impaired persons with greater access to telecommunications services.

B. Objective

30. The objective of this proceeding is to fulfill the mandate of Congress to implement the ADA, thereby assuring that all Americans have reasonable access to telecommunications services and equipment.

C. Legal Basis

31. The legal authority for this action is contained in sections 1, 4(i), 4(j), 225, 403 and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 225, 403 and 410.

D. Description, Potential Impact and Number of Small Entities Affected

32. The proposed rules are applicable only to common carriers, and it is not expected that they will have a significant impact on small entities because small entities may elect to pool requirements and provide service jointly. The overall economic impact of the proposed rules could be significant to carriers because they will be required to provide TDD services. Telephone rates for all subscribers will increase, but probably only by a marginal amount.

E. Recording, Recordkeeping, and Other Compliance Requirements

33. There are about 1,500 telephone companies in the United States. By the legislation, each will be responsible for providing, either individually, through a competitively selected vendor, or in concert with other carriers, TDD relay services. Recordkeeping requirements are limited by statute to those needed to accomplish billing.

F. Federal Rules That Overlap, Duplicate or Conflict With These Proposed Rules

34. None.

G. Any Significant Alternatives To Minimize the Impact on Small Entities

35. None. Although Congress has provided telephone companies with flexibility in how they provide relay services, there is no provision for waiver of the requirement.

H. Comments Are Solicited

36. We request written comments on this Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines set for comments on the other issues in this Notice of Proposed Rulemaking, but they must have a separate and distinct heading designating them as responses to this regulatory flexibility analysis. The Secretary shall send a copy of the Notice of Proposed Rulemaking to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

VI. Paperwork Reduction Act

37. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and has been found to impose no new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

VII. Ex Parte Presentations

38. For purposes of this nonrestricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* § 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) Releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by Commission or staff for the certification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1), If written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person who submits a written *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a written memorandum in duplicate to the Secretary (with a copy to the commission or staff member involved) which summarizes the data and arguments.) Each *ex parte* presentation

described above must be clearly labeled "ex parte," state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. § 1.1206.

VIII. Administrative Matters and Ordering Clauses

39. In accordance with the applicable procedure described in § 1.415 of the Commission's rules, 47 CFR 1.415, interested parties may file comments on or before January 15, 1991, and reply comments on or before February 15, 1991. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file and provided that the Commission's reliance on such information is noted in the Report and Order.

40. Interested parties shall file an original and 5 copies of all comments, replies, or other documents. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the public who wish to express their interest by participating informally in the Rule Making proceeding may do so by submitting one copy of their comments, provided that the docket number is specified in the heading. All filings in this proceeding will be available for public inspection by interested persons during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC. For additional information on how to file comments, parties should contact the FCC Consumer Assistance and Information Division at (202) 632-7000.

41. Accordingly, *It is Ordered*, That pursuant to sections 1, 4(i), 4(j), 225, 403 and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 225, 403 and 410, and 5 U.S.C. 553, Notice of Proposed Rulemaking is hereby provided to amend 47 CFR parts 0, 32, 36 and 64 as indicated herein.

42. *It is further ordered*, That the Secretary shall cause a copy of this Notice of Proposed Rule Making, including the initial regulatory flexibility analysis, to be sent to (a) The Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603 (a) (1981); and (b) to each State utility commission. The Secretary shall also cause this Notice of Proposed Rulemaking to appear in the **Federal Register**.

List of Subjects in 47 CFR Parts 0 and 64

Organization and functions, Communications common carriers, Telephone subscribers.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Appendix A—Telecommunications Relay Services for Hearing-Impaired and Speech-Impaired Individuals

The following represents the contents of title IV of the Americans with Disabilities Act of 1990.

Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals

(a) *Definitions.* As used in this section—

(1) *Common carrier or carrier.* The term "common carrier" or "carrier" includes any common carrier engaged in interstate communication by wire or radio as defined in section 3(h) and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b).

(2) *TDD.* The term "TDD" means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

(3) *Telecommunications relay services.* The term "telecommunications relay services" means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

(b) *Availability of telecommunications relay services*— (1) *In general.* In order to carry out the purposes established under section 1, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

(2) *Use of general authority and remedies.* For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the commission shall have the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier engaged in interstate communication. Any violation of this section by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of this Act by a common carrier engaged in interstate communication.

(c) *Provision of services.* Each common carrier providing telephone voice transmission services shall, not later than 3 years after the date of enactment of this section, provide in compliance with the regulations prescribed under this section, throughout the area in which it offers service, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. A common carrier shall be considered to be in compliance with such regulations.

(1) With respect to intrastate telecommunications relay services in any State that does not have a certified program under subsection (f) and with respect to intrastate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the Commission's regulations under subsection (d); or

(2) With respect to intrastate telecommunications relay services in any State that has a certified program under subsection (f) for such State, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under subsection (f) for such State.

(d) *Regulations.*—(1) *In general.* The Commission shall, not later than 1 year after the date of enactment of this section, prescribe regulations to implement this section, including regulations that—

(A) Establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

(B) Establish minimum standards that shall be met in carrying out subsection (c);

(C) Require that telecommunications relay services operate every day for 24 hours per day;

(D) Require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

(E) Prohibit relay operators from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use telecommunications relay services;

(F) Prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

(G) Prohibit relay operators from intentionally altering a relayed conversation.

(2) *Technology.* The Commission shall ensure that regulations prescribed to implement this section encourage, consistent with section 7(a) of this Act, the use of existing technology and do not discourage or

impair the development of improved technology.

(3) *jurisdictional separation of costs)*—(A) *In general.* Consistent with the provisions of section 410 of this Act, the Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

(B) *Recovering costs.* Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction. In a State that has a certified program under subsection (f), a State commission shall permit a common carrier to recover the costs incurred in providing intrastate telecommunications relay services by a method consistent with the requirements of this section.

(e) *Enforcement*—(1) *In general.* Subject to subsections (f) and (g), the Commission shall enforce this section.

(2) *Complaint.* The Commission shall resolve, by final order, a complaint alleging a violation of this section with 180 days after the date such complaint is filed.

(f) *Certification*—(1) *State documentation.* Any State desiring to establish a State program under this section shall submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services and the procedures and remedies available for enforcing any requirements imposed by the State program.

(2) *Requirements for certification.* After review of such documentation, the Commission shall certify the State program if the Commission determines that—

(A) The program makes available to hearing-impaired and speech-impaired individuals, either directly, through designees, through a competitively selected vendor, or through regulation of intrastate telecommunications relay services in such State in a manner that meets or exceeds the requirements of regulations prescribed by the Commission under subsection (d); and

(B) The program makes available adequate procedures and remedies for enforcing the requirements of the State program.

(3) *Method of funding.* Except as provided in subsection (d), the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

(4) *Suspension or revocation of certification.* The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a State whose program has been suspended or revoked, the Commission shall take steps as may be necessary, consistent with this section, to ensure continuity of telecommunications relay services.

(g) Complaint—(1) *Referral of complaint.* If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) is in effect, the Commission shall refer such complaint to such State.

(2) *Jurisdiction of Commission.* After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if—

(A) Final action under such State program has not been taken on such complaint by such State—

(i) Within 180 days after the complaint is filed with such State; or

(ii) Within a shorter period as prescribed by the regulations of such State; or

(B) The Commission determines that such State program is no longer qualified for certification under subsection (f).

(b) For conforming amendments, see Public Law 101-336, July 26, 1990.

Closed-Captioning of Public Service Announcements

Any television public service announcement that is produced or funded in whole or in part by any agency or instrumentality of Federal Government shall include closed captioning of the verbal content of such announcement. A television broadcast station licensee—

(1) Shall not be required to supply closed captioning for any such announcement that fails to include it; and

(2) Shall not be liable for broadcasting any such announcement without transmitting a closed caption unless the licensee intentionally fails to transmit the closed caption that was included with the announcement.

Appendix B

A. Part 0 of the Commission's Rules and Regulations (chapter 1 of title 47 of the Code of Federal Regulations, part 0) is proposed to be amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 is proposed to be revised to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.91 is proposed to be amended by adding new paragraph (m) to read as follows:

§ 0.91 Functions of the Bureau.

* * * * *

(m) Acts upon matters involving telecommunications relay service complaints and certification, except for action on complaints raising novel or unusual issues.

B. It is proposed to amend part 64 of the Commission's Rules and Regulations (chapter 1 of title 47 of the Code of Federal Regulations, part 64), as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 is proposed to be revised to read as follows:

Authority: Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 225, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 225 unless otherwise noted.

2. New § 64.605 is added to read as follows:

§ 64.605 TDD relay service.

(a) *Definitions.* As used in this section:

(1) *Common carrier or carrier.* The term "common carrier" or "carrier" includes any common carrier engaged in interstate communication by wire or radio as defined in section 3(h) of the Communications Act of 1934, as amended, and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b) of the Communications Act of 1934, as amended.

(2) *TDD.* The term "TDD" means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

(3) *Telecommunications relay services.* The term "telecommunications relay services," "TDD relay service," or "TDD service" means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

(b) *Jurisdiction.* Any violation of this section by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of the Communications Act of 1934, as amended, by a common carrier engaged in interstate communication.

(c) *Provision of services.* Each common carrier providing telephone voice transmission services shall, not later than July 25, 1993, provide in compliance with the regulations

prescribed herein, throughout the area in which it offers service, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. A common carrier shall be considered to be in compliance with these regulations.

(1) With respect to intrastate telecommunications relay services in any state that does not have a certified program under paragraph (f) of this section and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with paragraph (d) of this section; or

(2) With respect to intrastate telecommunications relay services in any state that has a certified program under paragraph (f) of this section for such state, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under paragraph (f) of this section for such state.

(d) *Telecommunications relay service standards.*—(1) *General operating requirements.* (i) Operators used in providing TDD relay service shall be trained to meet the specialized communications needs of individuals with hearing and speech impediments, and shall have sufficient skills in typing (at least 35 words per minute), grammar and spelling. They shall be trained in deaf culture and TDD etiquette, and shall be able to interpret typewritten American Sign Language and transliterate it to spoken English, and vice versa. Relay systems shall include adequate staffing to provide callers with reasonably efficient access under projected calling volumes, so that the probability of a busy response due to operator availability shall be comparable to what a voice caller would experience in attempting to reach a party through the voice telephone network. At a minimum, TDD relay systems shall be designed so that at least 85% of calls will be answered within ten seconds of commencement of ringing and relay service begun within 30 seconds of answer. Users shall have access to their chosen interexchange carrier through the TDD relay system, and to all other operator services, to the same extent that such access is provided voice users. Operators, if requested by the caller, shall attempt to complete calls 3 times consecutively, without delay, when receiving busy signals. TDD relay systems shall have procedures for handling emergency calls and operators shall be trained to handle such calls.

(ii) TDD relay systems shall transmit messages between the TDD and voice caller in real time. Adequate network facilities shall be used in conjunction with the TDD relay systems so that under projected calling volume the probability of a busy response due to loop or trunk congestion shall be comparable to what a voice caller would experience in attempting to reach a party through the telephone network. TDD relay systems shall be capable of communicating with either the ASCII or Baudot format, at any speed generally in use.

(iii) TDD relay services shall operate every day, 24 hours a day. Systems shall have adequate redundancy features, including uninterruptible power for emergency use, to assure continuity of operation. Carriers, through publication in their directories and otherwise, shall assure callers in their service areas are aware of the availability of their relay service and familiar with its use.

(iv) TDD relay service users shall pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from the point of origination to the point of termination.

(v) TDD relay operators are prohibited from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use TDD relay services. Relay systems shall be capable of handling any type of call normally provided by carriers, such as non-coin sent-paid, third party number, calling card and collect calls, except coin-sent calls.

(vi) TDD relay operators (and any other person having access to the content of a TDD message through his or her position) are prohibited from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of call.

(vii) TDD relay operators are prohibited from intentionally altering a relayed conversation.

(2) *Technology.* No regulation set forth in this section is intended to discourage or impair the development of improved technology that fosters the availability of telecommunications services to the disabled.

(3) *Jurisdictional separation of costs*—(i) *General.* Where appropriate, costs of providing TDD relay services shall be separated in accordance with the jurisdictional separation procedures and standards set forth in the Commission's regulations adopted pursuant to Section 410 of the Communications Act of 1934, as amended.

(ii) *Cost recovery.* Costs caused by interstate TDD relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate TDD relay services shall be recovered from the intrastate jurisdiction. In a state that has a certified program under paragraph (f) of this section, a state commission shall permit a common carrier to recover the costs incurred in providing intrastate TDD relay services by a method consistent with the requirements of this section.

(e) *Enforcement.* Subject to paragraphs (f) and (g) of this section, the Commission shall resolve any complaint alleging a violation of this section within 180 days after the complaint is filed.

(f) *Certification.* (1) *State documentation.* Any state desiring to establish a state program under this section shall submit documentation to the Commission captioned "TDD Intrastate Relay Service Certification." The documentation shall describe the program of such state for implementing intrastate telecommunications relay services and the procedures and remedies available for enforcing any requirements imposed by the state program.

(2) *Requirements for certification.* After review of such documentation, the Commission shall certify, by letter, or order, the state program if the Commission determines that

(i) The program makes available to hearing-impaired and speech-impaired individuals, either directly, through designees, through a competitively selected vendor, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such state in a manner that meets or exceeds the requirements prescribed in paragraph (d) of this section; and

(ii) The program makes available adequate procedures and remedies for enforcing the requirements of the state program.

(3) *Method of funding.* Except as provided in paragraph (d) of this section, the Commission shall not refuse to certify a state program based solely on the method such state will implement for funding intrastate telecommunications relay services, but funding mechanisms shall not be labeled in a manner that offends the public.

(4) *Suspension or revocation of certification.* The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such

certification is no longer warranted. In a state whose program has been suspended or revoked, the Commission shall take steps as may be necessary, consistent with this section, to ensure continuity of telecommunications relay services.

(g) *Complaint*—(1) *Referral of complaint.* If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a state and certification of the program of such state under paragraph (f) of this section is in effect, the Commission shall refer such complaint to such state.

(2) Jurisdiction of Commission. After referring a complaint to a state under paragraph (g)(1) of this section, the Commission shall exercise jurisdiction over such complaint only if

(i) Final action under such state program has not been taken on such compliant by such state

(A) Within 180 days after the complaint is filed with such state; or

(B) Within a shorter period as prescribed by the regulations of such state, or

(ii) The Commission determines that such state program is no longer qualified for certification under paragraph (f) of this section.

(3) *Complaint procedures*—(i) *Content.* A complaint shall be in writing and shall contain:

(A) The name and address of the complainant,

(B) The name (and address, if known) of the defendant against whom the complaint is made,

(C) A complete statement of the facts, including supporting data, where available, showing that such defendant did or omitted to do anything in contravention of Section 64.605 of the Commission's Rules, and

(D) The relief sought.

(ii) *Amended complaints.* An amended complaint setting forth transactions, occurrences or events which have happened since the filing of the original complaint and which relate to the original cause of action may be filed with the Commission.

(iii) *Number of copies.* An original and two copies of all complaints and amended complaints shall be filed. An original and one copy of all other pleadings shall be filed.

(iv) *Service.* (A) Except where a complaint is referred to a state pursuant to paragraph (g)(1) of this section, the Commission will serve on the named party a copy of any complaint or amended complaint filed with it, together with a notice of the filing of the complaint. Such notice shall call upon the defendant to satisfy or answer the complaint in writing within the time specified in said notice of complaint.

(B) All subsequent pleadings and briefs shall be served by the filing party on all other parties to the proceeding in accordance with the requirements of § 1.47 of this chapter. Proof of such service shall also be made in accordance with the requirements of said section.

(v) *Answers to complaints and amended complaints.* Any party upon whom a copy of a complaint or amended complaint is served under this part shall serve an answer within the time specified by the Commission in its notice of complaint. The answer shall advise the parties and the Commission fully and completely of the nature of the defense and shall respond specifically to all material allegations of the complaint. In cases involving allegations of harm, the answer shall indicate what action has been taken or is proposed to be taken to stop the occurrence of such harm. Collateral or immaterial issues shall be avoided in answers and every effort should be made to narrow the issues. Matters alleged as affirmative defenses shall be separately stated and numbered. Any defendant failing to file and serve an answer within the time and in the manner prescribed may be deemed in default.

(vi) *Replies to answers or amended answers.* Within 10 days after service of an answer or an amended answer, a complainant may file and serve a reply which shall be responsive to matters contained in such answer or amended answer and shall not contain new matters. Failure to reply will not be deemed an admission of any allegation contained in such answer or amended answer.

(vii) *Defective pleadings.* Any pleading filed in a complaint proceeding that is not in substantial conformity with the requirements of the applicable rules in this part may be dismissed.

[FR Doc. 90-28210 Filed 12-3-90; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 22

[CC Docket No. 90-358; DA 90-1709]

Establishment of Standards for Conducting Comparative Renewal Proceedings in the Domestic Public Cellular Radio Telecommunications Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rules; extension of time.

SUMMARY: The Common Carrier Bureau extended the time period for filing reply comments in this proceeding by two weeks in response to a request by Telocator. The Bureau stated that good cause had been shown for the extension of time and that grant of the extension would not significantly delay the proceeding. The time extension should facilitate the efforts of interested parties to address the proposals contained in the Notice of Proposed Rule Making and thus result in a more helpful record.

DATES: Reply comments are due by December 12, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mobile Services Division, Common Carrier Bureau, (202) 632-6450.

SUPPLEMENTARY INFORMATION:

Order

Adopted: November 21, 1990; Released: November 23, 1990.

By the Chief, Common Carrier Bureau:

1. On November 16, 1990, Telocator requested an extension of time to December 12, 1990, to file reply comments on the Notice of Proposed Rule Making (Notice) (55 FR 39020; September 24, 1990) in the above-referenced proceeding. Reply comments currently are due on or before November 28, 1990.

2. Telocator asserts that about twenty-five comments were filed in response to the Notice. Telocator also states that even though there may be substantial agreement among many of the commenting parties on the proposals contained in the Notice, there are still areas about which Telocator would like to consult with its members in order to develop a consensus, such as the nature of appropriate comparative criteria to be used during any renewal hearings. Telocator claims that an extension of two weeks will facilitate the efforts of interested parties to address these matters, which should enhance the Commission's consideration of these issues by presenting a more complete record.

3. We find that good cause has been shown for a two-week extension of time, the grant of which will not significantly delay this proceeding. Accordingly, the extension of time request is granted and reply comments on the above-referenced Notice from all parties are due on or before December 12, 1990.

Federal Communications Commission.

Richard M. Firestone,

Chief, Common Carrier Bureau.

[FR Doc. 90-28360 Filed 12-3-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-588, RM-7522]

Radio Broadcasting Services; Jackpot, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Dale A. Ganske seeking the allotment of Channel 253A to Jackpot, Nevada, as its first local FM service. Channel 253A can be allotted to jackpot in compliance with the commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 253A at Jackpot are North Latitude 41-59-06 and West Longitude 114-40-18. Petitioner is requested to furnish additional information to demonstrate that Jackpot is a community for allotment purposes since it is not listed in the 1980 U.S. Census or incorporated.

DATES: Comments must be filed on or before January 22, 1991, and reply comments on or before February 6, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dale A. Ganske, 1819 Mitchell Avenue, Eau Claire, Wisconsin 54701 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-588, adopted November 7, 1990, and released November 29, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-28361 Filed 12-3-90; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 55, No. 233
Tuesday, December 4, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Invitation To Serve on Federal Grain Inspection Service Advisory Committee

Under authority of section 20 of the United States Grain Standards Act (Act), the Secretary of Agriculture established the Federal Grain Inspection Service Advisory Committee (Advisory Committee) on September 29, 1981. Public Law 100–518 extended the authority for the Advisory Committee through September 30, 1993. The Advisory Committee was renewed by the Secretary of Agriculture on February 8, 1989, to provide advice to the Administrator of the Federal Grain Inspection Service (FGIS) with respect to the implementation of the Act.

The Advisory Committee presently consists of 15 members, appointed by the Secretary, representing the interests of grain producing, processing, storing, merchandising, consuming, and exporting industries, including scientists with expertise in research related to the policies in section 2 of the Act. Members of the Committee serve without compensation except that members, while away from their homes or regular places of business in the performance of service, are reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized under section 5703 of title 5, United States Code.

In accordance with Public Law 100–518, five of the initial 15 members were appointed for terms of 1 year, five were appointed for 2 years, and five were appointed for 3 years. Also alternate members were appointed for the same terms. The appointments of the members serving 20-year terms expire during February 1991. Hereafter appointments will be for 3-year terms except for replacements for those who resign.

Nominations are needed for persons to serve on the Advisory Committee to replace the five members and five alternate members whose terms expire during February 1991.

Persons interested in serving on the Advisory Committee, or persons interested in nominating persons to serve, should contact: John C. Foltz, Administrator, FGIS, room 1094–S, P.O. Box 96454, Washington, DC 20090–6454, in writing, and request a copy of Form AD–755, which must be completed and submitted to the Administrator at the above address not later than February 4, 1991.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, or martial status.

The final selection of committee members and alternates will be made by the Secretary.

Dated: November 28, 1990.

John C. Foltz,

Administrator.

[FR Doc. 90–28332 Filed 12–3–90; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Estela Beatriz Garcia

In the Matter of: Estela Beatriz Garcia, Virvey Del Pino, 1528 Buenos Aires, Argentina, Respondent.

Order

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having determined to initiate an administrative proceeding against Estela Beatriz Garcia (Garcia) pursuant to section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (Supp. 1990)) (the Act), and part 788 of the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1990)) (the Regulations), based on allegations that:

a. On or about September 8, 1988, Garcia conspired or acted in concert with Daniel Iturri to export from the United States to Argentina two Digital Equipment Corporation Micro Vax II computers without first obtaining the validated export licenses required by § 772.1(b) of the Regulations, thereby violating § 787.3(b) of the Regulations; and

b. On or about September 8, 1988, Garcia attempted to export from the United States to Argentina two Digital Equipment Corporation Micro Vax II computers without first obtaining the validated export licenses required by § 772.1(b) of the Regulations, thereby violating § 787.3(a) of the Regulations;

The Department and Garcia having entered into a Consent Agreement whereby the Department and Garcia have agreed to settle this matter by the Department's denying Garcia's export privileges for a two-year period and by Garcia's agreeing to all of the terms and conditions set forth in the Consent Agreement; and

The terms of the Consent Agreement having been approved by me;

It is therefore ordered,

First, Estela Beatriz Garcia, Virvey Del Pino, 1528 Buenos Aires, Argentina, shall, for a period of two years from the date of entry of this Order, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

A. All outstanding individual validated export licenses in which Garcia appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Garcia's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

B. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of

any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

C. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, partnership or business organization with which Garcia is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

D. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data subject to the Act and the Regulations, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Garcia or any related person, or whereby Garcia or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any U.S.-origin commodity or technical data exported in whole or in part, or to be exported by, to, or for Garcia or any related person denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

Second, that the proposed Charging Letter, the Consent Agreement and this Order shall be made available to the public. A copy of this Order shall be served upon Garcia and published in the **Federal Register**.

This Order is effective immediately.

Quincy M. Krosby,

Assistant Secretary for Export Enforcement.

Entered this 19th day of November, 1990.

[FR Doc. 90-28365 Filed 12-3-90; 8:45 am]

BILLING CODE 3510-DT-M

Switching Subcommittee of the Telecommunications Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Switching Subcommittee of the Telecommunications Equipment Technical Advisory Committee will be held December 17, 1990, 9:30 a.m. in the Herbert C. Hoover Building, Room 1629, 14th Street and Pennsylvania Avenue, NW., Washington, DC. The Switching Subcommittee was formed to study computer controlled switching equipment with the goal of making recommendations to the Office of Technology and Policy Analysis relating to the appropriate parameters for controlling exports for reasons of national security.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees 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 of 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 20230. For further information, contact Lee Ann Carpenter on (202) 377-2583.

Dated: November 26, 1990.

Betty Anne Ferrell,

Director, Technical Advisory Unit Office of Technology and Policy Analysis.

[FR Doc. 90-28415 Filed 12-3-90; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Stone Crab Fishery of the Gulf of Mexico

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 Fishery Management Council (Council) has submitted Amendment 4 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico (FMP) for review by the Secretary of Commerce (Secretary). Written comments are requested from the public.

DATES: Written comments must be received on or before January 24, 1991

ADDRESSES: Copies of Amendment 4 are available from the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609-2486. Comments should be sent to Michael E. Justen, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

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, disapproval, or partial 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 public comments in determining approvability of the document.

On July 24, 1989 (54 FR 30826), NOAA published revised guidelines interpreting the Magnuson Act's national standards for fishery management plans. In compliance with the revised guidelines, Amendment 4 proposes to add to the FMP a scientifically measurable definition of overfishing and an action plan to arrest overfishing should it occur. Overfishing exists when the realized egg production per recruit is reduced below 70 percent of potential production. Overfishing will be avoided when there is a minimum claw length that assures survival of the crabs to achieve the 70 percent egg production per recruit potential. Should overfishing occur, the Council and Florida would adjust by regulatory amendment the minimum claw length allowed to be harvested or the fishing mortality rate to increase the egg production potential per recruit to at least 70 percent. Discussion of the proposed definition and action plan are contained in Amendment 4.

In compliance with an amendment to the Magnuson Act (Pub. L. 99-659), Amendment 4 would also add to the FMP a section on vessel safety considerations and revise the section on habitat of significance to the fishery.

No regulatory changes are proposed as a result of Amendment 4.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: November 29, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-28399 Filed 11-29-90; 2:03 pm]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public hearings on draft Amendment 3 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico, which includes changing the target date for rebuilding reef fish stocks to January 1, 2007, and inclusion of speckled hind in the deep-water grouper category.

DATES: Public comments will be accepted through January 16, 1991. All hearings will begin at 7 p.m., and adjourn at 10 p.m., and are scheduled as follows:

1. Monday, December 10, 1990, Largo, Florida.
2. Tuesday, December 11, 1990, Mobile, Alabama.
3. Wednesday, December 12, 1990, Thibodaux, Louisiana.
4. Thursday, December 13, 1990, Galveston, Texas.

ADDRESSES: Comments may be mailed to Douglas Gregory, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, Florida 33609. The hearings will be held at the following locations:

1. Pinellas County Cooperative Extension Service Auditorium, 12175 125th Street North, Largo, Florida.
2. Mobile Civic Center, 401 Civic Center Drive, Mobile, Alabama.
3. Powell Auditorium, Nichols State University, Thibodaux, Louisiana.
4. Moody Civic Center, 2102 Seawall Boulevard, Galveston, Texas.

FOR FURTHER INFORMATION CONTACT: Douglas Gregory, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, Florida, 813-228-2815.

Dated: November 26, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-28398 Filed 12-3-90; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Commodity Exchange, Inc., Proposed Physical Option Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed physical option contract.

SUMMARY: The Commodity Exchange, Inc. (COMEX) has applied for designation as a contract market in five-day gold physical options. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, as determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before January 3, 1991.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the COMEX five-day gold option contract.

FOR FURTHER INFORMATION CONTACT: Please contact Richard Shilts of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, at (202) 254-7303.

SUPPLEMENTARY INFORMATION: The Comex's proposed five-day gold option contract represents a series of options based on the nearest, non-spot-month Comex gold futures "cycle" month and comprising a week-long (five-business-day) expiration cycle. Under the proposed contract terms, Comex will list one put and one call option each business day of the week based on the nearest of the following five gold futures "cycle" months—February, April, June, August, and December—which is not a spot month at the time of listing or expiration of the option. Each new put and call option will be listed at a strike price equal to the settlement price of the underlying futures contract on the preceding business day rounded to the nearest, higher whole-dollar increment. Each option will expire at the close of business five business days after the day preceding the initial listing day.

Five-day gold options that are in the money will be exercised automatically and cash settled at expiration. The options will be non-exercisable by the purchaser. Cash-settlement at expiration will be based on the "terminal value" of the option. As defined by the Comex, the terminal value will be based on the volume-weighted average price of the relevant gold futures contract month over the last fifteen minutes of trading on the expiration day of the five-day gold option. In the case of a call, the terminal value will be the dollar amount of the volume-weighted average settlement price of the underlying futures contract month on the option expiration day less the dollar amount of the strike price of the option (the difference multiplied by one hundred ounces—the contract size). For a put, the terminal value is the dollar amount of the strike price of the option less the dollar amount of the volume-weighted average settlement price of the underlying futures contract month on the option expiration day (the difference multiplied by one hundred ounces).

Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or phone at (202) 254-6314.

Other materials submitted by the COMEX in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and conditions of the proposed contract, or with respect to other materials submitted by the COMEX in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on November 28, 1990.

Gerald Gay,

Director.

[FR Doc. 90-28407 Filed 12-3-90; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Ada Board; Meeting

ACTION: Notice of Meeting.

SUMMARY: A meeting of the Ada Board will be held Friday, December 14, 1990 from 9 a.m. to 5 p.m. at the San Diego Princess Hotel, 1404 West Vacation Road, San Diego, California.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Carlson, Ada Information Clearinghouse c/o IIT Research Institute, 4600 Forbes Boulevard, Lanham, Maryland, 20760, (703) 685-1477.

Dated: November 29, 1990.

L.M. Bynum,

Office of the Secretary of Defense, Federal Register Liaison Office.

[FR Doc. 90-28383 Filed 12-3-90; 8:45 am]

BILLING CODE 3810-01-M

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program Between the Department of Housing and Urban Development and the Department of Defense

AGENCY: Defense Logistics Agency, DoD.

ACTION: Computer matching program between the Department of Housing and Urban Development (HUD) and the Department of Defense (DoD).

SUMMARY: The DoD, as the matching agency under the Privacy Act of 1974, as amended (5 U.S.C. 552a), is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between HUD and DoD that their records are being matched by computer. The record subjects are HUD delinquent debtors who are current or former Federal employees or military members receiving Federal salary or benefit payments and indebted and delinquent in their payment of debts owed to the United States Government under certain programs administered by HUD so as to permit HUD to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

DATES: This proposed action will become effective January 3, 1991, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 400 Army Navy Drive, Room 205, Arlington, VA 22202-2884. Telephone (703) 614-3027.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), HUD and DoD has concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection from defaulters of obligations held by HUD under the Debt Collection Act of 1982. The match will yield the identity and location of the debtors within the Federal Government so that HUD can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between HUD and DoD is available to the public upon request. Requests should be submitted to the address caption above or to the Systems Accountant, Cash and Credit Management Staff, Room 2118, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Set forth below is a public notice of the establishment of the computer matching program required by paragraph (e)(12) of the Privacy Act.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on November 15, 1990, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52738, December 24, 1985). This matching program is subject to review by OMB and Congress and shall not become effective until that review period of 30 days has elapsed.

Dated: November 23, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Computer Matching Program Between the Department of Housing and Urban Development and the Department of Defense for Debt Collection

A. Participating Agencies

Participants in this computer matching program are the Cash and Credit Management Staff of the Department of Housing and Urban Development (HUD) and the Defense Manpower Data Center (DMDC), Department of Defense (DoD). HUD is the source agency, i.e., the agency disclosing the records for the purpose of the match. DMDC is the specific recipient or matching agency, i.e., the agency that actually performs the computer matching.

B. Purpose of the Match

The purpose of the match is to identify and locate HUD delinquent debtors who are current or former Federal employees or military members receiving any Federal salary or benefit payments and indebted and delinquent in their repayment of debts to the United States Government under the following programs administered by HUD so as to permit HUD to pursue and collect the debt by voluntary repayments or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

1. Defaulted loans for mobile homes and home improvements that HUD is a guarantor and payor of last resort to lenders under Title 1, section 2 of the National Housing Act, as amended, 12 U.S.C. 1703.

2. Defaulted single family notes that HUD is a guarantor and payor of last resort to lenders under section 114(a) of the Housing Act of 1959, as amended, (Pub. L. 86-372), 12 U.S.C. 1702 *et seq.*

3. Defaulted individual direct rehabilitation loans that HUD is a guarantor and payor of last resort to lenders under section 312, Housing Act of 1964, as amended, (Pub. L. 88-560), 42 U.S.C. 1452(b).

4. HUD Departmental claim against individuals.

C. Authority for conducting the match

The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97-365), 31 U.S.C. chapter 37, subchapter I (General) and subchapter II (Claims of the United States Government), 31

U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716–3718 Administrative Offset, 5 U.S.C. 5514 Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 136, Assistant Secretaries of Defense, Appointment Powers and Duties; section 206 of Executive Order 11222; 4 CFR chapter II, Federal Claims Collection Standards (General Accounting Office—Department of Justice); 5 CFR part 550.1101–550.1108 Collection by Offset from Indebted Government Employees (OPM); 24 CFR part 17, Administrative Claims, subpart C 17.60 and 17.125–17.140, Salary Offset Provisions (HUD).

D. Records to be matched

The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. HUD will records from a system of records identified as HUD/DEPT 2, entitled "Accounting Records", last published in the **Federal Register** at 53 FR 17676 on April 26, 1990.

2. DMDC will use records from a system of records identified as S322.11 DLA–LZ, entitled "Federal Creditor Agency Debt Collection Data Base", last published in the **Federal Register** at 52 FR 37495 on October 7, 1987.

The categories of records in the HUD systems are delinquent debtors. The categories of records in the DoD system consists of active and retired military members, including the Reserve and Guard, and the OPM government-wide Federal active and retired civilian records. Both record systems contain an appropriate routine use disclosure provision required by the Privacy Act permitting the interchange of the affected personal information between HUD and DoD. The routine uses are compatible with the purpose for collecting the information and establishing and maintaining the record systems.

E. Description of computer matching program

A magnetic computer tape provided by HUD will contain data elements of the debtor's name, SSN, internal account number and total amount owed on approximately 203,303 delinquent debtors. The DMDC computer database file contains approximately 10 million records of active duty and retired military members, including the Reserve and the Guard, and the OPM governmentwide Federal civilian records of current and retired Federal employees. DMDC will match the SSN on the HUD tape by computer against the DMDC database. Matching records, hits based on SSNs, will produce data elements of the individual's name, SSN, service or agency, and current work or home address.

F. Individual notice and opportunity to contest

Due process procedures will be provided by HUD to those individuals matched (hits) consisting of HUD's verification of debt; 30-day written notice to the debtor explaining the debtor's rights; provision for debtor to examine and copy the agency's documentation of the debt; provision for debtor to seek HUD's review of the debt (or in the case of the salary offset provision, opportunity for a hearing before an individual who is not under the supervision or control of the agency); and opportunity for the individual to enter into a written agreement satisfactory to HUD for repayment. Only when all of the steps have been taken will HUD disclose pursuant to a routine use to effect an administrative or salary offset. Unless the individual notifies HUD otherwise within 30 days from the date of the notice, HUD will conclude that the data provided to the individual is correct and will take the next necessary action to recoup the debt. Failure to respond to the notice will be construed as acquiescence on the part of the debtor as to the correctness of the notice and justification for taking the next step to collect the debt under the law.

G. Inclusive dates of the matching program

This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated on an annual basis, unless OMB or the Treasury Department request a match twice a year. Under no circumstances shall the matching program be implemented before this 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between HUD and DoD, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

H. Address for receipt of public comments or inquiries

Director, Defense Privacy Office, 400 Army Navy Drive, room 205, Arlington, VA 22202–2884. Telephone (703) 614–3027.

[FR Doc. 90–27932 Filed 12–3–90; 8:45 am]

BILLING CODE 3810–01–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 1990.

DATES: Interested persons are invited to submit comments on or before January 3, 1991.

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 20202–4651.

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: November 28, 1990.

James O'Donnell,

Acting Director, for Office of Information Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Telecaption 4000 Rebate Offer.
Frequency: One time.
Affected Public: Individuals or households.

Reporting Burden:
Responses: 37,500.
Burden Hours: 1,238.

Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.

Abstract: This form will be used by consumers to receive a rebate offer for purchasing the telecaption decoder. The National Captioning Institute, (NMCI) funded by the Department will use the information to verify purchase of the decoder in order to mail the rebate to the consumer.

[FR Doc. 90-28343 Filed 12-3-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10828-000; Virginia]

Fairfax County Water Authority; Availability of Environmental Assessment

November 27, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the constructed Occoquan River Hydroelectric Project located on the Occoquan River in Fairfax and Prince William Counties, near Occoquan, Virginia, and has prepared an Environmental Assessment (EA) for the constructed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the project and has concluded that approval of the project, with appropriate mitigative measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 90-28336 Filed 12-3-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10122-002]

Carl Liebig; Surrender of Exemption

November 27, 1990.

Take notice that Carl Liebig, exemptee for the Boulder Creek Project No. 10122, has requested that its exemption be terminated because construction of the project is not economically feasible at this time. The exemption was issued April 30, 1987. The project would have been located on Boulder Creek in Lake County, Montana. The exemptee has stated that no ground disturbing activity has taken place; therefore, no conditions are needed concerning the restoration of lands.

The exemptee filed the request on November 1, 1990, and the exemption for Project No. 10122 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 90-28337 Filed 12-3-90; 8:45 am]

BILLING CODE 6717-01-M

United States Department of Energy—Alaska Power Administration; Filing

[Docket No. EF91-1011-000]

November 27, 1990.

Take notice that on November 13, 1990, the Alaska Power Administration tendered its response to a deficiency letter, issued October 31, 1990, by the Acting Director of the Office of Electric Power Regulation in connection with the filing of the Alaska Power Administration in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 7, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-28338 Filed 12-3-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-33-000, RP89-45-008, RP89-127-004, RP89-193-004, RP90-18-005, and RP90-46-002]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

November 27, 1990.

Take notice that ANR Pipeline Company (ANR) on November 21, 1990 tendered for filing as part of its Original Volume No. 1 FERC Gas Tariff, six copies each of the following tariff sheets which ANR proposes to be effective on December 21, 1990;

Seventh Revised Sheet No. 88
Seventh Revised Sheet No. 89
Seventh Revised Sheet No. 90
Sixth Revised Sheet No. 90A
Third Revised Sheet No. 90A. 1
Fourth Revised Sheet No. 116
Third Revised Sheet No. 117
Third Revised Sheet No. 118
Third Revised Sheet No. 119
Second Revised Sheet No. 120
Second Revised Sheet No. 121
Third Revised Sheet No. 124
Third Revised Sheet No. 125
Second Revised Sheet No. 126
Second Revised Sheet No. 127

The above referenced tariff sheets are being submitted to implement a revised methodology for allocating the fixed monthly charge portion of ANR's buyout buydown costs pursuant to Commission Order No. 528. Specifically, ANR seeks to revise the allocation percentages applicable to the fixed monthly charges which ANR renders to its firm sales customers.

ANR states that copies of the filing were served upon all of its sales customers, interested State Commissions and each person listed on the official service list compiled by the Secretary in these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426 by December 4, 1990, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-28339 Filed 12-3-90; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00298; FRL-3843-1]

State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) will hold a 2-day meeting, beginning on December 10, 1990 and ending on December 11, 1990. This notice announces the location and times for the meeting and sets forth tentative agenda topics. The meeting is open to the public.

DATES: The SFIREG will meet on Monday, December 10, 1990, from 8:30 a.m. to 5 p.m. and on Tuesday, December 11, 1990, beginning at 8:30 a.m. and adjourning at approximately 1 p.m.

ADDRESSES: The meeting will be held at: Hyatt Regency - Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, (703) 418-1234.

FOR FURTHER INFORMATION CONTACT: By mail: Arty Williams, Office of Pesticide Programs (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 1007, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-5017.

SUPPLEMENTARY INFORMATION: The tentative agenda includes the following:

1. Regional reports.
2. Reports from the SFIREG Working Committees.
3. Update on activities of the Registration Division, Office of Pesticide Programs.
4. Update on activities of the Special Review and Reregistration Division, Office of Pesticide Programs.
5. Update on activities of the Office of Compliance Monitoring.
6. Discussion of mesocosm studies.
7. Report from the November 29, 1990 Office of Pesticides and Toxic Substances National Meeting held in Dallas, Texas.
8. Presentation of SFIREG Working Committee Issue Papers including wetlands labeling, use of FIFRA section 2(ee), and use of the term "reregistered" on labeling and advertising.

Dated: November 23, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 90-28411 Filed 12-3-90; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-44559; FRL 3804-7]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on *meta*-phenylenediamine (*m*-pda) (CAS No.108-45-2), *ortho*-phenylenediamine (*o*-pda) (CAS No. 95-54-5), *para*-phenylenediamine (*p*-pda) (CAS No. 106-50-3), and tributyl phosphate (TBP) (CAS No. 126-73-8), submitted pursuant to a final test rule.

Data were also received on 1,1,1-trichloroethane (CAS No. 71-55-6), triethylene glycol monomethyl (TGME) (CAS No. 112-35-6) and Triethylene glycol monoethyl ethers (TGEE) (CAS No. 112-50-5), crotonaldehyde (CAS No. 4170-30-3), C. I. disperse blue 79:1 (CAS No. 3618-72-2), and alkyl phthalates: diundecyl (CAS No. 3648-20-2), di(isononyl) (CAS Nos. 28553-12-0 and 68515-48-0), ditridecyl (CAS Nos. 119-06-2 and 68515-47-9), and di(isodecyl) (CAS Nos. 26761-40-0 and 68515-49-1). This data were submitted pursuant to a consent order under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, room E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. The "Receipt of Test Data" notice has not been published in the **Federal Register** since September 11, 1990, because of the delay in approving the FY91 budget. This notice contains all 4(d) final reports EPA has received since September 11th. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for *m*-pda, *o*-pda and *p*-pda were submitted by E. I. du Pont de Nemours and Co., on behalf of the test sponsors and pursuant to a final test rule at 40 CFR 799.3300. They were received by EPA on September 18 and 21, 1990, and October 23, 1990. The September 18th submission describes the acute oral neurotoxicity studies in rats. The September 21st submission describes indirect photolysis screening tests. The October 23rd submission for *o*-pda and *p*-pda describes the acute toxicity to rainbow trout (*oncorhynchus mykiss*). Neurotoxicity and chemical fate testing is required by this test rule. This chemical is used in aramid fibers, rubber and plastic antioxidants, photographic chemicals, dye intermediates, corrosion inhibitors and pesticides.

Test data for (TBP) were submitted by Synthetic Organic Chemical Manufacturers Association, on behalf of the test sponsors and pursuant to a final test rule at 40 CFR 799.4360. They were received by EPA on September 27 and 28, 1990, and October 2, 1990. The submissions describe the sediment and soil adsorption isotherm test, the hydrolysis rate test, and the vapor pressure test. Chemical fate testing is required by this test rule. This chemical is used as base stock in the formulation of fire-resistant aircraft hydraulic fluids.

Test data for 1,1,1-trichloroethane were submitted by Halogenated Solvents Industry Alliance, on behalf of the test sponsors and pursuant to a

consent order at 40 CFR 799.5000. They were received by EPA on September 18 and October 23, 1990. The September 18th submission describes the acute inhalation neurophysiology effects in rats. The October 23rd submission describes the mouse micronucleus test. Neurotoxicity testing is required by this consent order. This chemical is used as a cleaning stabilizer.

Test data for TGME and TGEE were submitted by the Chemical Manufacturers Association on behalf of the test sponsors and pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on October 3, 1990. The submission describes a 13-week dermal toxicity study in rats, and a 90-day subchronic drinking water inclusion neurotoxicity study in rats. Dermal subchronic toxicity and neurotoxicity testing is required by this test rule. These chemicals are used as chemical intermediates, and as a diluent in brake fluid.

Test data for crotonaldehyde were submitted by Eastman Kodak Company, on behalf of the test sponsors and pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on October 31, 1990. The submissions describe: acute algal, daphnid, fathead minnow, gammarid and rainbow trout studies, and a ready biodegradability study. Acute toxicity testing is required by this test rule. This chemical is used as an intermediate to produce crotonic acid, sorbic acid, 3-methoxybutanol and *n*-butanol.

Test data for C.I. disperse blue 79:1 were submitted by the Ecological and Toxicological Association of the Dyestuffs Manufacturing Industry, on behalf of the test sponsors and pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on November 6, 1990. The submission describes the drosophila sex-linked recessive lethal test. Health effects testing is required by this consent order. This chemical is used for dyeing or printing polyester fibers.

Test data for alkyl phthalates were submitted by the Chemical Manufacturers Association, on behalf of the test sponsors and pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on October 23 and November 5, 1990. The October 23rd submission describes the analytical characterization of ^{14}C-labelled phthalate esters for diundecyl, di(isononyl) (mixed isomers), and ditridecyl phthalate (mixed isomers). The November 5th submission describes the analytical characterization of ^{14}C-labelled phthalate esters for di(isodecyl) phthalate (mixed isomers). Environmental effects and chemical fate testing is required by this consent order. This chemical is use primarily as a plasticizer.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44559). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, room. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: November 23, 1990.

James B. Willis,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 90-28412 Filed 12-3-90; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-59898; FRL 3842-1]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 6 such PMN(s) and provides a summary of each.

DATES: Close of Review Periods:

Y 91-32, November 18, 1990.
Y 91-33, November 22, 1990.
Y 91-34, November 21, 1990.
Y 91-35, 91-36, November 26, 1990.
Y 91-37, November 18, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, room E-545, 401 M Street, SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8 a.m. and noon, and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 91-32

Manufacturer. Confidential.

Chemical. (G) Alkanedioic acid, polymer with N<N-dialkylalkanamine, 3-hyroxymethyl-2-alkylpropanoate, alkanediolalkanediamine and 1,1'-methylene bis (4-isocyanatocyclohexane).

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

Y 91-33

Importer. Confidential.

Chemical. (G) Aromatic polyurethane resin.

Use/Import. (S) Textile coating. Import range: Confidential.

Y 91-34

Manufacturer. E. I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Waterborne poly acrylourethane.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

Y 91-35

Manufacturer. The Woodbridge Corporation.

Chemical. (G) Polyurethane suspension in polyol.

Use/Production. (G) Manufacture of polyurethane form. Prod. range: Confidential.

Y 91-36

Manufacturer. H.B. Fuller Company.

Chemical. (G) Polyamide.

Use/Production. (S) Adhesive. Prod. range: Confidential.

Y 91-37

Importer. Bostik, Inc.

Chemical. (G) Waterborne polyurethane.

Use/Import. (G) Open, nondispersive use. Import range: Confidential.

Dated: November 21, 1990.

Steve Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 90-28413 Filed 12-3-90; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing

1. The Commission has before it the following groups of mutually exclusive applications for three new FM stations:

Applicant	File No.	MM Docket No.
I		
A. Gary Sellers; Paintsville, KY.	BPH-891215ML	90-433
B. Morehead State University; Paintsville, KY.	BPED-891220MD	
C. B & G Broadcasting, Inc.; Paintsville, KY.	BPH-891220MH	
D. Ray Edmund Preston,II; Paintsville, KY.	BPH-891220MI	

Issue Heading and Applicant

1. Financial, B
2. Site Availability, B
3. Main Studio, B
4. Air Hazard, B, C, D
5. Comparative, All applicants
6. Ultimate, All applicants

II		
A. The Cromwell Group, Inc.; Wilmore, KY.	BPH-880727MM	90-432
B. Marianne Warnock; Wilmore, KY.	BPH-880727NE	
C. Absolute Broadcasting Company; Wilmore, KY.	BPH-880728MD	

Issue Heading and Applicant

1. Air Hazard, C
2. Comparative, A, B, C
3. Ultimate, A, B, C

III		
A. American Indian Broadcast Group, Inc.; Vero Beach, FL.	BPH-880523MF	90-434
B. Sun Coast Broadcasting Company; Vero Beach, FL.	BPH-880523MG	
C. Gwendolyn G. Rowland; Vero Beach, FL.	BPH-880523ML	
D. WTET Limited Partnership; Vero Beach, FL.	BPH-880523MM	
E. Wilson Broadcasting Co., Inc.; Vero Beach, FL.	BPH-880523MO	
F. Margarita Bouza Fernandez; Vero Beach, FL.	BPH-880523MP	
G. Indian River Broadcasting, Inc.; Vero Beach, FL.	BPH-880523MS	
H. Denette Schweikert; Vero Beach, FL.	BPH-880523MT	
I. Vero Beach Communications, Inc.; Vero Beach, FL.	BPH-880523MV	
J. Orchid Isle Communications, Inc.; Vero Beach, FL.	BPH-880523MW	
K. Fisher Broadcasting, Inc.; Vero Beach, FL.	BPH-880523MY	
L. Coastal Communications FM Radio Limited Partnership; Vero Beach, FL.	BPH-880523MZ	
M. Media VI, a Florida General Partnership; Vero Beach, FL.	BPH-880523NA	
N. John D. Earman; Vero Beach, FL.	BPH-880523NF	
O. Joann Radakovic; Vero Beach, FL.	BPH-880523MR (Dismissed Herein)	

Issue Heading and Applicants

1. Environmental Impact, C
2. City Coverage, C
3. Financial, E
4. (See Appendix), G
5. (See Appendix), G
6. (See Appendix), G
7. (See Appendix), G
8. Site Availability, K
9. (See Appendix), N
10. Air Hazard, A, B, D, E, F, G, J, M, N
11. Comparative, A, B, C, D, E, F, G, H, I, J, K, L, M, N
12. Ultimate, A, B, C, D, E, F, G, H, I, J, K, L, M, N

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division.

Appendix (Vero Beach, Florida)

4. To determine whether Sonrise Management Services, Inc. is an undisclosed party to G's (River) application.

5. To determine whether G's (River) organizational structure is a sham.

6. To determine whether G (River) violated § 1.65 of the Commission's Rules, and/or lacked candor, by failing to report that an application in which one or more of its partners has an ownership interest was dismissed with prejudice with an unresolved character issue pending.

7. To determine, from the evidence adduced pursuant to Issues 4 through 6 above, whether G (River) possesses the basic qualifications to be a licensee of the facilities sought herein.

9. To determine with respect to N (Earman) (a) whether the applicant has reasonable assurance that the transmitter site specified is available to it; (b) whether N (Earman) violated § 1.65 of the Commission's Rules and/or lacked candor, by failing to report that his proposed site had been rejected by the State of Florida; and (c) whether, in light of the evidence adduced pursuant to issues (a) and (b) above, whether N (Earman) possesses the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 90-28362 Filed 12-3-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Space Charter Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217-011307

Title: Space Charter Agreement Between Compagnie Generale Maritime and Sea-Land Service, Inc., P&O Containers Ltd. and Nedlloyd Lijnen, B.V.

Parties:

P&O Containers Limited
Nedlloyd Lijnen, B.V.
Sea-Land Service, Inc.
Compagnie Generale Maritime (CGM).

Synopsis: The proposed Agreement would authorize the parties to charter and cross-charter space to each other, rationalize schedules and sailings, lease and interchange equipment, share terminals and undertake additional activities in the trade between North European ports and U.S. North Atlantic Coast ports. Commencing in April, 1992, the Agreement would include ports on the U.S. South Atlantic and Gulf Coasts, and other European ports. The Agreement will be effective for a five-year term.

By Order of the Federal Maritime Commission.

Dated: November 28, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-28345 Filed 12-3-90; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Dolphin Cruises, Inc., Ulysses Cruises, Inc. and Compania de Vapores Seabreeze S.A., 1007 North America Way, Miami, FL 33132.

Vessel: Seabreeze I.

Dated: November 28, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-28346 Filed 12-3-90; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended.

Dolphin Cruises, Inc., Ulysses Cruises, Inc. and Compania de Vapores Seabreeze S.A., 1007 North America Way, Miami, FL 33132.

Vessel: SEABREEZE I.

Dated: November 28, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-28347 Filed 12-3-90; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Office of the Assistant Secretary for Health, Statement of Organization, Functions and Delegations of Authority

Part H, Public Health Service (PHS) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services, chapter HD (Public Health Service Regional Offices, HD1-HDX), 44 FR 21711, April 11, 1979, as amended most recently at 52 FR 15391-92, April 28, 1987) is amended to reflect changes in Region III, Philadelphia, Pennsylvania, that retitles the Division of Health Resources Development as the Division of Family Health and Resources Development. There are no organization changes in the remaining nine regional offices.

Public Health Service Regional Offices

Under Chapter HD, Public Health Service Regional Offices, following Section HD-00, Mission, delete Section HD-10, Organization, and substitute the following:

Section HD-10, Organization. The Public Health Service Regional Offices (HD1-HDX) consist of:

Office of Regional Health Administrator (HD1-HDX)
Office of Engineering Services (HD*E) [1]
Office of Grants Management (HD*J)
Division of Preventive Health Services (HD*U)
Division of Health Services Delivery (HD*V) [2]
Division of Community Health Services (HD*C) [3]
Division of Family Health and Resources Development (HD*R) [4]
Division of Health Resources Development (HD*W) [5]
Division of Federal Employee Occupational Health (HD*H)

Revise the footnotes referenced for the PHS Regional Office organizations to read as follows:

[1] Offices located in Regions II, VI, and X.

[2] Division in all regions except Region IV.

[3] Division in Region IV.

[4] Division in Regions III and IV.

[5] Division in all regions except Regions III and IV.

Under Section HD-20. Functions, Public Health Service (PHS) Regional Offices (HD1-HDX), after the statement for the Division of Health Resources Development (HD*W), revise the footnote to reflect that this Division is in all Regional Offices except Region III and Region IV.

Under the title for the Division of Family Health and Resources Development, change the organizational code to (HD*R) and reference the statement and Footnote [1] to reflect that this Division is in Region III and Region IV.

Dated: November 21, 1990.

Wilford J. Forbush,

Director, Office of Management.

[FR Doc. 90-28327 Filed 12-3-90; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[G-910-G1-0408-4111-13; NMNM 13277]

Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of 43 CFR 3108.2-3, Anadarko Petroleum Corporation, et al., petitioned for reinstatement of Oil and Gas Lease NMNM 13277 covering the following described land located in Lea County,

New Mexico:

T. 20 S., R. 33 E.,
sec. 13, SW¼SE¼
Containing 40.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the land. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year, and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee. Reinstatement of the lease will be effective as of the date of termination, March 1, 1990.

Dated: November 23, 1990.

Dolores L. Vigil,
Chief, Adjudication Section.

[FR Doc. 90-28396 Filed 12-3-90; 8:45 am]
BILLING CODE 4310-FB-M

Bureau of Land Management (BLM)

[AZA-24479-ZAHD]

Arizona; Receipt of Conveyance of Mineral Interest Application

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Little Horse Ranch Limited Partnership has applied for conveyance of the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 10 N., R. 5 W.,
Secs. 7, 8, 9, 17, 18.
T. 10 N., R. 6 W.,
Secs. 1, 4, 5, 11, 12, 13, 21, 24, 25, 27, 28, 35.
T. 11 N., R. 6 W.,
Sec. 33.
T. 10 N., R. 7 W.,
Secs. 21, 22, 27, 28.
T. 11 N., R. 7 W.,
Secs. 25, 26, 27, 34, 35.

The mineral interest will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface ownership for the lands described above, where there are no known mineral values or in those instances where the reservation of ownership of the mineral interest in the United States interferes with or precludes appropriate non-mineral development of the lands and such development would be a more beneficial use of the lands than its mineral development.

Additional information concerning this application may be obtained from the Area Manager, Lower Gila Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Arizona 85025.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance or a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of application, April 10, 1990, whichever occurs first.

Dated: November 21, 1990.

Henri R. Bisson,
District Manager.

[FR Doc. 90-28324 Filed 12-3-90; 8:45 am]
BILLING CODE 4310-32-M

[OR-943-01-4214-11; GP1-054; OR-21977, et al.]

Proposed Continuation of Withdrawals; Oregon and Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that all or portions of six separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to mining and, where closed, opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

The Forest Service proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The following described lands and projects are involved.

Umpqua National Forest

1. OR-21977, Secretarial Order dated April 23, 1908. Wolf Creek Administrative Site, 80 acres located in Sec. 9, T. 27 S., R. 2 W., W.M., in Douglas County, approximately 20 miles east of Roseburg.

2. OR-21979, Secretarial Order dated July 29, 1908. South Umpqua Falls Administrative Site, 21.56 acres located in section 2, T. 29 S., R. 1 E., W.M., in Douglas County, approximately 6 miles northeast of Canyonville.

Mt. Baker—Snoqualmie National Forest

3. OR-22163(WASH), Secretarial Order dated March 19, 1908, and amended by the Secretarial Order dated July 22, 1914. Clear Creek Administrative Site, 13 acres located in section 31, T. 32 N., R. 10 E., W.M., in Snohomish County, approximately 3 miles east of Darrington.

4. OR-22360(WASH), Secretarial Order dated November 23, 1906, and amended by the Secretarial Order dated June 18, 1908. Marble Creek Administrative Site, 91.2 acres located in section 8, T. 35 N., R. 12 E., W.M., in Snohomish County, approximately 15 miles east of Rockport.

Olympic National Forest

5. OR-22150(WASH), Secretarial Order dated June 11, 1908. Willaby Administrative Site, 12.95 acres located in section 19, T. 23 N., R. 9 W., W.M., in Grays Harbor County, approximately 1 mile west of Quinault.

Wenatchee National Forest

6. OR-22244(WASH), Public Land Order No. 725 dated June 4, 1951. Swauk Campground Site, 240 acres located in sections 1, 11, 12, T. 21, N., R. 17 E., W.M., in Kittitas County, approximately 18 miles west of Wenatchee.

The withdrawals currently segregate the lands from operation of the mining laws, but not the mineral leasing laws, and some of the lands are closed to operation of the public laws in general. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals except that the lands be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuations may present their views in

writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will continue until such final determination is made.

Dated: November 21, 1990.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90-28366 Filed 12-3-90; 8:45 am]

BILLING CODE 4310-33-M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 24, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. box 37127, Washington, DC 20013-7127. Written comments should be submitted by December 19, 1990.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Bradley County

Martin, Dr. John Wilson, House, 200 Ash St., Warren, 90001948

Carroll County

Lake Leatherwood Recreational Facilities (Facilities Constructed by the Civilian Conservation Corps in Arkansas, 1933-1942, MPS), End of Co. Rd. #61, Eureka Springs vicinity, 90001942

Leatherwood Dam (Facilities Constructed by the Civilian Conservation Corps in Arkansas, 1933-1942, MPS), N. End of Lake Leatherwood, Eureka Springs vicinity, 90001943

Miller County

Wynn-Price House, Price St., Garland vicinity, 90001950

Nevada County

Carolina Methodist Church, Co. Rd. #10 E of jct. with Kirk Rd., Poison Springs SF, Rosston vicinity, 90001947

Union County

McDonald, D., House, 800 S. Broadway, Smackover, 90001949

Washington County

Villa Rosa, 617 W. Lafayette, Fayetteville, 90001946

CONNECTICUT

New Haven County

Fulton, Lewis, Memorial Park, Roughly bounded by Cook, Pine, Fern & Charlotte Sts., Waterbury, 90001951

MARYLAND

Somerset County

Hayman, Jeptha, House, Westover—Marion Rd. S of jct. with Charles Barnes Rd., Kingston vicinity, 90001939

Washington County

Lehman's Mill Historic District, Lehman's Mill Rd. between Marsh Pike & Marsh Run, Hagerstown vicinity, 90001945

MASSACHUSETTS

Berkshire County

Pettibone Farm, Old Cheshire Rd. N of jct. with Nobodys Rd., Lanesborough, 90001944

NORTH CAROLINA

Cabarrus County

Morrison, Robert Harvey, Farm and Pioneer Mills Gold Mine, 730 Morrison Rd., Midland vicinity, 90001952

SOUTH CAROLINA

Marlboro County

Franklinton Depot, 201 E. Mason St., Franklinton, 90001941

SOUTH DAKOTA

Lyman County

Fort Lookout IV, Address Restricted, Oacoma vicinity 90001940

TENNESSEE

Franklin County

Hundred Oaks, Oak St. at U.S. 64, Winchester, 75001753

[FR Doc. 90-28349 Filed 12-3-90; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31781]

Michael R. Boyce, et al.—Control Exemption—Trona Railway Co.

Michael R. Boyce, Mark C. Demetree, Richard J. Donahue, D. George Harris, Richard J. Nick, and Anthony J. Petrocelli (Acquisition Group), noncarrier, individuals, have filed a notice of exemption to acquire control of class III rail carrier Trona Railway Company (TRC), which operates in California.

Acquisition Group currently controls non-connecting class III rail carrier Hutchinson and Northern Railway Company (H&N), which operates in Kansas. Control of H&N is achieved indirectly through Acquisition Group's control of NAMSCO Inc.,[1] which in turn owns subsidiaries North American Salt Company (NAS) and North American Chemical Company (NAC). H&N is, in turn, a wholly owned subsidiary of NAS.

Acquisition Group, through NAC, will acquire indirect control of TRC through an asset purchase of Soda Products Division of Kerr-McGee Chemical Corporation (Kerr-McGee), a noncarrier, which owns 100 percent of the voting stock of TRC. Following consummation of the proposed transaction, Acquisition Group will hold approximately 68 percent of the voting stock of NAC. After the transaction is consummated, Acquisition Group will control two carriers, H&N and TRC.

Acquisition Group indicates that: (1) The properties operated by H&N and TRC will not connect with each other; (2) the acquisition of control is not part of a series of anticipated transactions that would connect the rail carriers with each other; and (3) the transaction does not involve a Class I carrier. Therefore, this transaction involves the control of a nonconnecting carrier and is exempt from the prior review requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock. Ry.—Control—Brooklyn Eastern Dist.,* 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Paul A. Cunningham, Pepper, Hamilton & Scheetz, 1300 19th Street NW., Washington, DC 20036.

Decided: November 28, 1990.

[1] Acquisition Group owns 35.95 percent of NAMSCO's outstanding voting stock. Individuals comprising the Group constitute a majority of NAMSCO's five-member board of directors and hold all of the major management positions at NAMSCO.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-28401 Filed 12-3-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31786]

Dallas Area Rapid Transit Property Acquisition Corp.—Acquisition and Operation Exemption—Rail Lines of Southern Pacific Transportation Co. et al.

Dallas Area Rapid Transit Property Acquisition Corporation (DARTPAC), a noncarrier, has filed a notice of exemption of acquire by purchase and to operate approximately 56 route miles of railroad in Dallas, Collin, and Tarrant Counties, TX, from Southern Pacific Transportation Company (SPT), St. Louis Southwestern Railway Company (SSW), and Dallas Terminal Railway and Union Depot Company (DTR). The properties consist of: (a) The SSW rail line between Ft. Worth (MP 632.27) and Wylie (MP 578.20); and (b) the SPT and DTR rail lines and yard track between Tower 19 and Oakland Ave. in downtown Dallas.

DARTPAC's corporate parent, Dallas Area Rapid Transit (DART), a rail carrier subject to this Commission's jurisdiction, has concurrently filed a related petition for exemption in Finance Docket No. 31778, *Dallas Area Rapid Transit—Control Exemption—Dallas Area Rapid Transit Property Acquisition Corporation.* In that proceeding, DART seeks an exemption under 49 U.S.C. 10505 from the prior review and approval requirements under 49 U.S.C. 11343 *et seq.* for its continuance in control of DARTPAC.

DARTPAC plans to consummate the purchase transaction on or before December 21, 1990. DARTPAC intends to grant trackage rights: (a) To SSW, to operate over the former SSW rail line between Ft. Worth and Wylie; and (b) to SSW and SPT, to operate over the former SPT and DTR rail lines and yard track between Tower 19 and Oakland Ave. It is anticipated that these trackage rights will become effective on or before December 21, 1990. DARTPAC indicates that SSW and SPT, by a separate filing with the Commission, will give notice of these trackage rights.

Any comments must be filed with the Commission and served on: Lonnie E. Blaydes, Jr., Dallas Area Rapid Transit Property Acquisition Corporation, 601 Pacific Ave., Dallas, TX 75202.

DARTPAC shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: November 28, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-28400 Filed 12-3-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 90-16]

Robert Park, R.Ph., d/b/a Powell's Riverside Pharmacy, Macon, GA; Hearing

Notice is hereby given that on February 16, 1990, the Drug Enforcement Administration, Department of Justice, issued to Robert Park, R.Ph., d/b/a Powell's Riverside Pharmacy, an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AP1189225, and deny any pending applications for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on December 12, 1990, commencing at 9:30 a.m., at the U.S. District Court, Richard B. Russell Building, U.S. Courthouse, 75 Spring Street, SW., Atlanta, Georgia. Room number of courtroom unknown at this time.

Dated: November 27, 1990.

Robert C. Bonner,

Administrator, Drug Enforcement Administration.

[FR Doc. 90-28329 Filed 12-3-90; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-24,777]

Evanite Fiber Corp., Corvallis, OR; Negative Determination Regarding Application for Reconsideration

By an application dated October 31, 1990 the United Paperworkers International Union (UPIU) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on October 19, 1990 and published in the **Federal Register** on November 6, 1990 (55 FR 46738).

Pursuant 29 CFR 90.18(c) reconsideration may be granted under the following circumstances;

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The Corvallis plant produces battery separators (the 10-G type and the all-glass-mat type) which are components of batteries. Also produced at Corvallis is glass paper, a battery separator component which is used internally and sold to outside battery separator producers. Investigation findings show that the workers were not separately identifiable by product.

The union claims that worker separations were the result of battery separator production going to Mexico.

The Department's denial was based on the fact that worker separations were the result of a transfer of production of the 10-G type battery separator in August 1990 to another domestic facility. Also, the Corvallis plant experienced increased sales of glass paper and the all-glass-mat type (AGM) battery separator in fiscal year (FY) 1990 compared to FY 1989.

Other investigation findings show that the major customers of Evanite Fiber changed their purchasing patterns to a different battery separator—a high tech submicro product also produced at Corvallis which has made the 10-G separator obsolete. Accordingly, a domestic transfer and a technological change would not provide a basis for a worker group certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 26th day of November.

Mary Ann Wyrsch,

Director, Office of Unemployment Insurance Service, UIS.

[FR Doc. 90-28404 Filed 12-3-90; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panels; Notice of Meetings

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting(s) to be held at 1800 G Street, NW., Washington, DC 20550 (except where otherwise indicated).

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to provide advice and recommendations to the National Science Foundation concerning the support of research, engineering, and science education. The agenda is to review and evaluate proposals as part of the selection process for awards. The entire meeting is closed to the public because the panels are reviewing proposals that include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

CONTACT PERSON: M. Rebecca Winkler, Committee Management Officer, room 208, 357-7363.

Dated: November 28, 1990.

M. Rebecca Winkler,

Committee Management Officer.

Committee name	Agenda	Date(s)	Times	Room [1]
International Programs Review Panel	JSPS/STA Postdoctoral	Dec. 14, 1990	8:30 a.m.-5 p.m.	1214
Ocean Sciences Review Panel (formerly Advisory Panel for Ocean Sciences Research).	REU Site Meeting	Dec. 18, 1990	10 a.m.-5 p.m.	614

[1] At 1800 G Street, NW., Washington, DC.

[FR Doc. 90-28348 Filed 12-3-90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Proposed Amendments to 10 CFR Part 36 on Licenses and Radiation Safety Requirements for Large Irradiators

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The 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. *Title of the information collection:* "Proposed Amendments to 10 CFR part 36 on Licenses and Radiation Safety Requirements for Large Irradiators".

3. *The form number if applicable:* None.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* Large gamma irradiator licensees.

6. *An estimate of the number of responses:* One report per year from each of the 25 irradiator licensees.

7. *An estimate of the total number of hours needed to complete the requirements or requests:* 18,750 hours annually (includes recordkeeping and reporting) by large irradiator licensees.

8. *The average burden per response is: 750 hours per year.*

9. *An indication of whether section 3504(h), Pub. L. 96-511 applies:* No.

10. *Abstract:* The proposed rule would adopt a new 10 CFR part 36 on licenses and radiation safety requirements for large gamma irradiators. Irradiators use gamma radiation to irradiate products to change their characteristics in some way such as sterilization or to promote chemical reactions. The proposed safety requirements are, for the most part, a codification of current licensing policy and practices. The proposed rule includes both facility and equipment design requirements and operational safety requirements.

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 should be directed to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150-), Office of Information and Regulatory Affairs, NEOB-3109, Office of Management and Budget, Washington, DC 20503.

Comments can also be communicated by telephone at (202) 395-3084.

NRC Clearance Officer is Brenda J. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 27th day of November, 1990.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Designated Senior Official for Information Resources Management.

[FR Doc. 90-28380 Filed 12-3-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Panel for Decontamination of Three Mile Island, Unit 2 Renewal

The United States Nuclear Regulatory Commission (NRC) announces the renewal of the Advisory Panel for Decontamination of Three Mile Island, Unit 2. It has been determined that renewal of the charter for this advisory committee is in the public interest in order for NRC to continue to receive public input and enhance public understanding of the major activities required to decontaminate and safely clean up the damage at Three Mile Island Nuclear Power Station, Unit 2. The charter which continues the Panel through November 28, 1992, has been filed with the appropriate Congressional Committees and the Library of Congress.

FOR FURTHER INFORMATION CONTACT: Michael Masnik, Office of Nuclear Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, 301-492-2442.

Dated: November 28, 1990.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90-28381 Filed 12-3-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-255]

Consumers Power Co., Palisades Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment from the requirements of appendix R to 10 CFR part 50 to Consumers Power Company (the licensee), for the Palisades Plant, located in Covert Township, Van Buren County, Michigan.

Environmental Assessment

Identification of Proposed Action: The exemption would grant relief from the requirements of appendix R, section III.G.(2)(d) as these requirements relate to the separation of cables and instrumentation in the Containment Air Room. Section III.G(2)(d) of appendix R would require the subject cables and equipment to be separated by 20 feet, free of intervening combustibles, since these cables and equipment comprise redundant trains of equipment required for post-fire, safe shutdown, of the reactor.

The exemption is in response to the licensee's application for exemption dated October 4, 1985, as supplemented August 8, 1990.

The Need for the Proposed Action: The proposed exemption is needed because the features described in the licensee's request regarding the existing and proposed fire protection at the plant for the Containment Air Room comprise the most practical method for meeting the intent of appendix R; and, literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action: The proposed exemption will provide a degree of fire protection such that there is no increase in the risk of fires at this facility. Based on the amount and type of combustibles, and type of ignition source, a fire in the Containment Air Room is extremely unlikely. If a fire were to occur it would most likely be a small self-extinguishing fire that would generate dense smoke. If a much larger fire were to occur, the licensee has analyzed its effect on safety related instrumentation in the room and shown that sufficient instruments would be operable to safety shut down the plant. The proposed exemption does not include any alternations to the Containment Air Room or its existing fire protection capabilities; consequently, the probability of fires has not been increased and the potential for post-fire radiological releases will not be greater than previously determined. Additionally, the proposed exemption does not otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR part 20. 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 exemption.

Alternative to the Proposed Action: It has been concluded that there is no measurable impact associated with the proposed exemption and associated license amendment; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources: This action involves no use of resources not previously considered in the Final Environmental Statements for the Palisades Plant.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's requests 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 exemption.

Based upon the foregoing environmental assessment, we conclude 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 October 4, 1985, as supplemented August 8, 1990, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC and at the Van Zoeren Library, Hope College, Holland, Michigan.

Dated at Rockville, Maryland, this 23rd day of November 1990.

For the Nuclear Regulatory Commission.

Robert C. Pierson,

Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V, and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-28377 Filed 12-3-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-315]

Indiana Michigan Power 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. DPR-58, issued to Indiana Michigan Power Company, (the licensee), for operation of the Donald C. Cook Nuclear Power Plant Unit No. 1, located in Berrien County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TSS) relating to defective steam generator tubes allowing repair of defective steam generator tubes by using approved sleeves.

The proposed action is in accordance with the licensee's application for amendment dated June 27, 1990, as supplemented by a letter dated October 9, 1990.

The Need for the Proposed Action

The proposed change to the TS is required in order to provide the licensee the ability to perform repairs on steam generator tubes which are defective. Currently, defective tubes must be plugged and removed from service.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to TS and concludes that the proposed sleeving repairs can be accomplished to produce a sleeved tube of acceptable metallurgical properties, strength and mechanical stability, leak tightness and corrosion resistance. Also, that the pre-service integrity of the sleeves can be assured by implementing the proposed sleeve installation examinations. Thus, the proposed action would not affect the probability or consequences of potential reactor accidents and would not otherwise affect radiological plant effluents. Sleeving of defective tubes will be done on an as needed basis where practical. Because of the uncertainty as to the number of tubes

which may require sleeving, the licensee could not provide an estimate of the total occupational dose for the sleeving activities. However, the licensee did provide information by letter dated November 21, 1990 that the estimated dose would be approximately 95 mrem per sleeve. While this is somewhat higher than the estimated dose for plugging tubes, the alternative repair method currently approved for use at the facility, this compares favorably with industry experience for similar repairs. In addition, it is expected that the dose for the proposed sleeving action would fall within the expected range for annual occupational exposure experienced at nuclear power plants. On this basis, the staff believes that the proposed action will not involve a significant increase in individual or cumulative radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological 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 October 19, 1990 (55 FR 42526). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Donald C. Cook Nuclear Plant Units 1 and 2, dated August 1973.

Agencies and Persons Consulted

The NRC 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 license amendment.

Based upon the foregoing environmental assessment, we conclude 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 June 27, 1990 and a supplement dated October 9, 1990, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 27th day of November 1990.

For the Nuclear Regulatory Commission.

Robert C. Pierson,

Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-28379 Filed 12-3-90; 845 am]

BILLING CODE 7590-01-M

Recommendations on the Title Transfer Provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985

AGENCY: Nuclear Regulatory Commission.

ACTION: SECY 90-318 for comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of SECY 90-318 "Low-Level Radioactive Waste Policy Amendments Act Title Transfer and Possession Provisions" (dated September 12, 1990) for public comment. SECY 90-318 is available in the NRC Public Document Room, 2120 L Street, Washington, DC, telephone (202) 634-3273.

DATES: The comment period expires January 31, 1991.

ADDRESSES: Send written comments to James Kennedy, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or hand deliver comments to 11555 Rockville Pike, Rockville, MD between 7:30 a.m. and 4:15 p.m.

FOR FURTHER INFORMATION CONTACT: James Kennedy, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 492-3401.

DISCUSSION: The Nuclear Regulatory Commission (NRC) staff has prepared an analysis of the issues associated with the waste title transfer and possession provisions of the Low-Level Radioactive Waste Policy Amendments Act (LLRWPAA) of 1985. The staff's analysis also identifies options for discharging the Commission's responsibilities under the Atomic Energy Act and LLRWPAA. Major issues related to these provisions include States taking possession of commercial low-level radioactive waste (LLW) after 1993 or 1996 in accordance with the LLRWPAA and licensing of such possession (including interim storage of the LLW until disposal facilities are available) by NRC and Agreement States. These issues and staff's recommendations were summarized in SECY 90-318 and discussed in a public meeting of the Commission on October 29, 1990.

During the meeting, the Commission decided to solicit the views of the public on the staff recommendations provided in SECY 90-318. The Commission will consider these views in deciding on an appropriate course of action. In addition to the public's general views on the title transfer and possession provisions of the LLRWPAA, the Commission is particularly interested in comments in response to the following questions:

1. What factors should the Commission consider in deciding whether to authorize on-site storage of LLW (other than storage for a few months to accommodate operational needs such as consolidating shipments or holding for periodic treatmentor decay) beyond January 1, 1996?

2. What are the potential health and safety and environmental impacts of increased reliance on on-site storage of LLW?

3. Would LLW storage for other than operational needs beyond January 1, 1996, have an adverse impact on the incentive for timely development of permanent disposal capacity?

4. What specific administrative, technical, or legal issues are raised by the requirements for transfer of title?

5. What are the advantages and disadvantages of transfer of title and possession as separate steps?

6. Could any State or local laws interfere with or preclude transfer of

title or possession of LLW?

7. What assurances of the availability of safe and sufficient disposal capacity for LLW should the Commission require and when should it require them? What additional conditions, if any, should the Commission consider in reviewing such assurances?

8. Are there any other specific issues that would complicate the transfer of title and possession, as well as on-site storage, of LLW and mixed (radioactive and chemical hazardous) waste?

Dated at Rockville, Maryland, this 28th day of November, 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 90-28382 Filed 12-3-90; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide and NUREG; Issuance, Availability

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft of a new guide planned for its regulatory guide series together with a draft of the associated standard review plan for license renewal. This draft guide and the associated standard review plan are being issued to involve the public in the early stages of the development of regulatory guidance in the area of license renewal.

The draft guide, temporarily identified by its task number, DG-1009 (which should be mentioned in all correspondence concerning this draft guide), is titled, "Standard Format and Content of Technical Information for Applications To Renew Nuclear Power Plant Operating Licenses," and is intended for Division 1, "Power Reactors." The draft regulatory guide establishes a uniform format and content acceptable to the staff for structuring and presenting the technical information to be compiled and submitted by an applicant for a renewed operating license. More specifically, this draft regulatory guide describes (1) the content of technical information to be included in license renewal applications, (2) the criteria for selection of structures, systems and components important to license renewal for which age-related degradation should be assessed and accounted for, (3) guidance for the evaluation of design, operational, and environmental factors that contribute to age-related degradation, (4) the identification of aging mechanisms and specific degradation locations, and (5) the attributes of established effective programs and acceptable actions taken or to be taken to assess and manage age-related degradation. Additionally, detailed guidance for identifying, assessing and managing age-related degradation is contained in Appendix A to this draft regulatory guide.

The NRC is developing the draft "Standard Review Plan for License Renewal," (SRP-LR) for use by the NRC staff when performing safety reviews of applications for the renewal of power reactor licenses. The use of the SRP-LR when reviewing license renewal applications provides a framework for the staff to determine whether or not (1) the application is sufficient to allow the timely renewal provisions of 10 CFR 2.109 to apply, (2) systems, structures, and components important to license renewal have been identified, (3) significant age-related degradation has been identified and its effects evaluated, and (4) programs for age-related degradation management have been or will be implemented such that the current licensing basis will be maintained during the renewal term. The draft SRP-LR has been developed to enable the staff to identify areas and issues requiring review, and provides acceptance criteria to assist the reviewers.

The review criteria in the SRP-LR were developed by the NRC staff with assistance from experienced technical experts at both Pacific Northwest and Idaho National Engineering Laboratories. The criteria represent current knowledge and technical judgments on aging phenomena and age-related degradation management strategies. Although, in many instances, review procedures and acceptance criteria are not specified in detail, general guidance is provided. The staff expects that the SRP-LR will be periodically revised to include additional detail based on our review of the pilot-plant applications and the industry technical reports.

Public comments are being solicited on the draft regulatory guide and the draft standard review plan for license renewal. Comments should be accompanied by supporting data. In particular for the draft SRP-LR, written comments are desired in the following areas:

(1) Are there specific additional review criteria or review procedures for a system, structure, or component? Provide the supporting technical basis for these items.

(2) Are there specific review criteria or review procedures already in the document that should be modified?

DATES: The comment period expires March 8, 1991. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW. (lower level), Washington, DC.

The draft regulatory guide and the draft SRP-LR are available for inspection at the Commission's Public Document Room, the Gelman Building 2120 L Street NW. (lower level), Washington, DC. Requests for single copies of the draft guide and draft SRP-LR (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services. Telephone requests cannot be accommodated. Regulatory guides and NUREGs are not copyrighted, and Commission approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: For information concerning the draft regulatory guide contact Mr. Jitendra Vora, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-3854. For information regarding the draft SRP-LR contact Mr. John Thoma, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-3146.

Dated at Rockville, Maryland, this 26th day of November, 1990.

For the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

Dennis M. Crutchfield,

Director, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-28376 Filed 12-3-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-528]

Arizona Public Service Co., et al.; Palo Verde Nuclear Generating Station, Unit No. 1, Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-41, issued to Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power and Southern California Public Power Authority (licensees), for operation of the Palo Verde Nuclear Generating Station, Unit No. 1, located in Maricopa County, Arizona.

The proposed amendment would extend the date for the next regular inspection of steam generator tubes. This amendment was requested by the licensee's letter of November 14, 1990.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis that addressed the above three standards in the amendment application. The NRC staff has reviewed the licensee's analysis as follows:

1. The proposed Technical Specification amendment will not increase the probability or consequences of an accident previously evaluated because the Unit 1 steam generator tubes have been eddy current examined on four previous occasions since 1981. The most recent examination was July 1989, with 100 percent of the tubes being examined. The results of the examination determined that the indications identified are primarily associated with mechanical wear as opposed to chemistry or corrosion problems. The mechanical wear is due to vibration associated with normal plant operation. The overall results of the examination are very good, in that after completion of the second fuel cycle, the total number of degraded and/or defective tubes was minimal (19 tubes being plugged) and no significant wear patterns were observed.

Since the July 1989 eddy current examination, Unit 1 was shutdown until June 1990. During this time there was no mechanical wear that could contribute to tube degradation. Also during this shutdown period, chemistry control was maintained in accordance with plant procedures which dictates strict adherence to prescribed lay-up practices and specifications.

The Unit 1 steam generators entered wet-layup conditions on April 15, 1989. Other than the nitrogen overpressure not being maintained within specifications because of the main steam isolation valve (MSIV) work undertaken and the wet-layup recirculation line out of service for rework, the remaining chemistry control was well maintained with only a few instances when chemistry analyses indicated out of specification conditions. The pH was slightly low (SG #1) at 9.7 (specification is 9.8 to 10.5) on May 5, 1989. Chloride, sulfate, and sodium were well below the 1.0 ppm specification limit during the entire period. Hydrazine ranged from 81 to 176 ppm with an average of 123 ppm (75-200 ppm is the range).

The two occurrences of possible concern were the lack of a nitrogen overpressure while the MSIV work was undertaken and the lack of sampling between September 25, 1989 and November 16, 1989. During wet-layup, steam generator sampling is accomplished via the wet-layup recirculation line. This line was out of service due to repair of a valve in the recirculation system. The first hydrazine analysis after this period showed no appreciable depletion in hydrazine concentration. Subsequent samples taken after restoration of the recirculation system showed a slight change from 155 to 123 ppm. Similar conditions existed for SG #2 during this time period with hydrazine still well within the band of 75 to 200 ppm as prescribed in procedure 74AC-9CY04. And again the sodium, chloride, and sulfate were well within the wet-layup specification. Both steam generators had hydrazine contents of at least 80 ppm, with chloride, sulfate, and sodium below the 1 ppm limit. Both steam generators had one day where the pH dropped below the specified 9.8.

The concern with the lack of nitrogen overpressure and wet-layup chemistry would be the potential impact of corrosion on the steam generator. In order to evaluate this possibility, an evaluation was undertaken by the steam generator manufacturer.

The materials of construction for the steam generators are grouped in the following categories:

—Alloy 600 is used for the heat transfer steam generator tubes.

—Ferritic stainless steel (type 405 or 409) used for eggcrates, batwings and flow distribution plate.

—Low alloy steels or carbon steel is used for tubesheet stay, shells, baffles, dryers and separators.

In summary, the lack of nitrogen overpressure surveillance when considered in conjunction with the remaining wet-layup chemistry is not expected to have any adverse corrosion effects. Specifically, pitting should not occur in the Alloy 600 tubing. Although the water was exposed to oxygen, the pH was maintained between 9.8 and 10.5, (except for one day where the pH dropped to 9.7) above which should prevent copper chloride ($CuCl_2$) induced pitting of Alloy 600 tubing. Therefore, general corrosion is not a problem with Alloy 600 at these shutdown conditions.

General corrosion is also not a problem with ferritic stainless steels containing at least 11 percent chromium (Cr) at these shutdown conditions.

General corrosion is a concern with low alloy and carbon steel surfaces exposed to the vapor phase during wet-layup if sufficient nitrogen overpressure is not maintained. It is assumed that atmospheric air would eventually replace the nitrogen originally present. As such, the presence of oxygen in the vapor space permits the oxidation of the protective magnetite (Fe_3O_4) to the less protective hematite (Fe_2O_3—rust). At startup, this will add to the amount of material that must be processed and removed. In the immersed section, general corrosion of the carbon and low alloy steels will not occur due to the high pH and the presence of hydrazine.

The presence of oxygen in the vapor space of the steam generators during shutdown should not affect the integrity of the system. Its presence however, is expected to increase the general corrosion to the exposed carbon steel and low alloy steel surfaces and create more sludge.

The accident or event of concern regarding the steam generators would be a steam generator tube rupture (SGTR). The radiological releases calculated for a SGTR event with a loss of offsite power and a fully stuck open

atmospheric dump valve (ADV) are well within the guidelines of 10 CFR part 100. The RCS and secondary system pressures are well below 110 percent of the design pressure limits, thus assuring the integrity of these systems.

Additionally, no violation of the fuel thermal limits occurs, since the minimum DNBR remains above the 1.24 value throughout the duration of the event.

Based on the July 1989 100 percent eddy current examination, where no significant wear patterns or corrosion buildup was observed and the fact that chemistry was maintained during wet-layup, the proposed change will not increase the probability of an accident previously evaluated. The proposed change will not increase the consequences of an accident previously evaluated due to the fact that in the event of a steam generator tube rupture the calculated radiological releases are well within the guidelines of part 100.

2. The proposed Technical Specification amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated because the Chapter 15 analysis assumes that the plant is challenged by a SGTR that includes additional events and failures beyond those postulated by the NRC Standard Review Plan (SRP) 15.6.3. In addition to the conservative assumptions of the SRP (loss of offsite power, iodine spiking, etc.), this analysis postulates that the operators open an ADV on the affected steam generator and that it both runs to the full open position and sticks full open for the duration of the transient. The results of which are well within the guidelines of 10 CFR part 100 for any radiological releases and the RCS and secondary system pressures are well below the design pressure limits. Therefore the proposed Technical Specification amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed Technical Specification amendment does not involve a significant reduction in a margin of safety because no changes are being made to the way the facility is being operated. Thus, no new failure modes are being introduced.

If a SGTR were to occur, diagnosis of the event is facilitated by radiation monitors, which initiate alarms and inform the operator of abnormal levels and that corrective operator action is required. Additional diagnostic information is provided by RCS pressure and pressurizer level response indicating a leak, and by level response in the affected steam generator.

The most limiting SGTR event is for a leak flow equivalent to a double-ended rupture of a U-tube at full power conditions. This event has been analyzed for Palo Verde (UFSAR section 15.6.3) and concludes that the resultant radiological releases are well within 10 CFR 100 guidelines and the RCS and secondary system pressures are well below 110 percent of the design pressure limits and no violation of the fuel thermal limits occurs. Therefore, the proposed Technical Specification amendment will not involve a significant reduction in a margin of safety.

Therefore, based on the above considerations, the Commission has made a proposed determination that the request for amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 3, 1991, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to

show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide the 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 shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to James E. Dyer: 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 Arthur C. Gehr, Esq., Snell and Wilmer, 3100 Valley Center, Phoenix, Arizona 85073, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 14, 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, Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Rockville, Maryland, this 27th of November 1990.

For the Nuclear Regulatory Commission.

James E. Dyer,

Acting Director, Project Directorate V, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 90-28378 Filed 12-3-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee (TPSC); Initiation of a Review To Consider Designation of Czechoslovakia as a Beneficiary Developing Country Under the Generalized System of Preferences (GSP) and Solicitation of Public Comments Relating to the Designation Criteria

On October 23, 1990, Czechoslovakia requested designation as a GSP beneficiary. The TPSC has initiated a review to determine if Czechoslovakia meets the designation criteria of the GSP law and should be designed as a beneficiary. GSP is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461-2465). The designation criteria are listed in subsections 502(a), 502(b) and 502(c) of the Act. Interested parties are invited to submit comments regarding the eligibility of Czechoslovakia for designation as a GSP beneficiary. The designation criteria mandate determinations related to participation in commodity cartels, preferential treatment provided by beneficiaries to other developed countries, expropriation without compensation, enforcement of arbitral awards, international terrorism, and internationally recognized worker rights. Other practices taken into account include market access for goods and services, investment practices and intellectual property rights.

Comments must be submitted in 12 copies, in English, to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, 600 17th Street NW., Room 414, Washington, DC 20506. Comments must be received no later than 5 p.m. on Wednesday, January 16, 1991.

Information and comments submitted regarding Czechoslovakia will be subject to public inspection by appointment with the staff of the GSP Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2007.7. If the document contains business confidential information, twelve copies of a nonconfidential version of the submission along with twelve copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the document. The version which does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either "public version" or "non-confidential").

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street NW., room 414, Washington, DC 20506. The telephone number is (202) 395-6971. Public versions of all documents related to this review will be available for review by appointment with the USTR Public Reading Room shortly following filing deadlines. Appointments may be made from 10

a.m. to noon and 1 p.m. to 4 p.m. by calling (202) 395-6186.

David Weiss,

Chairman, Trade Policy Staff Committee.

[FR Doc. 90-28405 Filed 12-3-90; 8:45 am]

BILLING CODE 3190-01-M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning January 1, 1991, shall be at the rate of 26 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning January 1, 1991, 33.2 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 66.8 percent of the taxes collected under such sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: November 27, 1990.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 90-28364 Filed 12-3-90; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

November 28, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Cambrex Corporation
  Common Stock, $.10 Par Value (File No. 7-6418)
Frontier Insurance Group, Inc.
  Common Stock, $.01 Par Value (File No. 7-6419)
Gemini II Inc. Income Shares
  Preferred Stock, $1 Par Value (File No. 7-6420)
Home Insurance Co.
  $2.95 Cumulative Preferred Stock (File No. 7-6421)
Jaclyn, Incorporated
  Common Stock, $1 Par Value (File No. 7-6422)
Metro Mobil CTS, Inc.
  Class B Common Stock, $.033 Par Value (File No. 7-6423)
Nuveen New York Municipal Income Fund, Inc.
  Common Stock, $.01 Par Value (File No. 7-6424)
NWNL Companies, Inc.
  Common Stock, No Par Value (File No. 7-6425)
Prime Financial Partners
  Class A Units Limited Partnership Interest, No Par Value (File No. 7-6426)
Robertson-Ceco Corporation
  Common Stock, 1¢ Par Value (File No. 7-6427)
Midwest Resources, Inc.
  Common Stock, No Par Value (File No. 7-6428)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 19, 1990, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-28373 Filed 12-3-90; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice and Order Granting Accelerated Approval to Proposed Rule Change Extending the Informational Linkage With the Stock Exchange of Singapore Ltd. for a Six Month Period; Correction

In FR Document No. 90-27142 beginning on page 48194 for Monday, November 19, 1990, the release number for File No. SR-NASD-90-55 was incorrectly stated as Release No. 34-26809. The correct number is 34-28809.

Dated: November 26, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-28334 Filed 12-3-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28664; File No. SR-PSE-90-39; International Series Release No. 195]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Amendments to Exchange Rules To Provide for the Listing and Trading of Currency Warrants

November 26, 1990.

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 October 31, 1990, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Commission previously approved a regulatory framework to permit the PSE to list and trade warrants based upon foreign and domestic stock market indexes,[1] and the PSE proposes to broaden this regulatory framework to permit the listing and trading of currency warrants on the Exchange. Specifically, the Exchange proposes to amend its Rules 3.2, 9.18(c) and 18(e) for this purpose. The PSE believes that its proposed regulatory framework for currency warrants is based upon, and substantially similar to, a regulatory

[1] *See* Securities Exchange Act Release No. 28034 (May 22, 1990), 55 FR 22001.

framework previously adopted by the American Stock Exchange ("AMEX") that also includes currency warrants.[2]

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

On March 27, 1990, the Exchange submitted to the Commission a proposed rule change (SR–PSE–90–11) to establish a regulatory framework to allow the Exchange to list and trade index warrants and the Commission approved this PSE proposal in May 1990.[3] Specifically, this PSE proposal amended PSE Rule 3.2, entitled "Warrants," to provide listing guidelines for index warrants based on established broad-based domestic and foreign stock market indices. this Exchange proposal also amended PSE Rule X, Section 18(c), entitled "Suitability," to apply the options suitability standard to index warrant recommendations made by members and member organizations. Moreover, the Exchange proposal amends PSE Rule X, section 18(e)(1), entitled "Discretionary Accounts," so that a Senior Registered Options Principal ("SROP") or Registered Options Principal ("ROP") is required to approve and initial any discretionary index warrant transaction on the day it is executed.

At this time, the Exchange proposes to extend its regulatory framework for index warrants to include currency warrants. Specifically, the Exchange proposes to amend PSE Rule 3.2, "Warrants", to add "currency warrants" as a type of warrant issue that can be listed and traded on the Exchange. In this regard, the PSE proposes to apply the same minimum listing and trading criteria to currency warrant issues that currently are applicable to index warrant issues. Moreover, the PSE proposes to clarify the minimum by specifying in its Rules (1) that these warrants shall have a term ranging from one to five years and (2) these warrants must be cash-settled.

The Exchange also proposes to amend PSE Rule 9.18(c) ("Suitability") and 8.18(e) ("Discretionary Accounts") in order to apply these provisions to currency warrant transactions.[4] Specifically, as in the case of index warrants, the options suitability standard will apply to currency warrant recommendations made by members and member organizations and the Exchange will recommend that currency warrants only be sold to options-approved accounts. Moreover, as wit index warrants, a SROP or ROP will be required to approve and initial any discretionary currency warrant transaction on the day it is executed.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act in general and section 6(b)(5) in particular, in that it will act to facilitate transactions in securities and innovative financing techniques designed to allow an issuer to offer debt at a lower rate than in a straight debt offering in offering in return for assuming some foreign currency risk. The Exchange believes that purchasers of the proposed currency warrants will be able to use them to hedge against, or speculate on, foreign currency fluctuations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either 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 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 malign written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section 450 Fifth Street, NW., Washington, DC. 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 the file number in the caption above and should be submitted by December 26, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–28333 Filed 12–3–90; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

November 28, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

BJ Services Company
Common Stock, $0.10 Par Value (File No. 7–6412)
Beazer PLC

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[2] *See* Securities Exchange Act Release No. 26152 (October 3, 1988), 53 FR 39832.

[3] *See supra* note 1.

[4] As part of a PSE proposal to renumber some of its Rules, sections 18(c) and 18(e)(1) of Rule X, that originally applied to index warrant transactions, were renumbered Rules 9.18(c) and 9.18(e), respectively. *See* Securities Exchange Act Release No. 27787 (March 8, 1990), 55 FR 9817.

[5] 17 CFR 200.30–3(a)(12) (1989).

American Depositary Receipts (10p Par Value) (File No. 7-6413)
Dallas Semiconductor Corporation
Common Stock, $0.02 Par Value (File No. 7-6414)
Latin American Investment Fund, Inc.
Common Stock, $0.001 Par Value (File No. 7-6415)
RJR Nabisco Holdings Corp.
Cum. Conv. Pfd Stock, $0.01 Par Value (File No. 7-6416)
Societe Generale Warrants Limited N.V.
Put Warrants on CAC 40 Paris Stock Exchange Index, Expiring November 4, 1992 (File No. 7-6417)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 19, 1990, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-28374 Filed 12-3-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17885; (813-84)]

Merrill Lynch MBP, Inc.: Application for Exemption

November 28, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act")

APPLICANT: Merrill Lynch MBP, Inc. ("MBP" or "Applicant"), a Delaware corporation and an indirect wholly-owned subsidiary of Merrill Lynch & Co., Inc. ("ML&Co"), on behalf of limited partnership ("Partnerships") which may be formed by MBP.

RELEVANT 1940 ACT SECTIONS: Applicant seeks an order under section 6(b) granting an exemption from all provisions of the 1940 Act except sections 7, 8(a), and 9, certain provisions of section 17, sections 36 through 53, and the rules and regulations related to these sections.

SUMMARY OF APPLICATION: Applicant, on behalf of the Partnerships, seeks an order that would grant the Partnerships an exemption from most provisions of the 1940 Act, and would permit certain affiliated and joint transactions. Each Partnership will be an employee's securities company within the meaning of section 2(a)(13) of the 1940 Act.

FILING DATES: The application was filed on August 8, 1988, and amended on May 23, 1989, January 19, 1990, and November 28, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 26, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, Merrill Lynch World Headquarters, World Financial Center, North Tower/250 Vesey Street, New York, New York 10281-1327.

FOR FURTHER INFORMATION CONTACT: Thomas G. Sheehan, Staff Attorney, (202) 272-7324, or Jeremy N. Rubenstein, Branch Chief, (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. ML&Co is a diversified financial services holding company which, through its subsidiaries, provides investment, financing, insurance and related services. ML&Co and its affiliates are hereinafter collectively referred to as "Merrill Lynch." ML&Co's principal subsidiary, Merrill Lynch, Pierce, Fenner & Smith incorporated, is a broker-dealer registered under the Securities Exchange Act of 1934.

2. MBP is a corporation organized under the laws of the State of Delaware and is an indirect wholly-owned subsidiary of ML&Co. MBP, or another direct or indirect wholly-owned subsidiary of ML&Co formed for such purpose, will be the general partner of the Partnerships (the "General Partner").

3. The General Partner proposes to form Partnerships annually to enable key employees of Merrill Lynch ("Eligible Employees") to benefit from certain investment opportunities that come to Merrill Lynch's attention. Each Partnership will be a Delaware limited partnership formed as an "employees' securities company" within the meaning of section 2(a)(13) of the 1940 Act, and will operate as a closed-end, non-diversified, management investment company. The affairs of each Partnership will be governed by a limited Partnership agreement ("Partnership Agreement") executed by the General Partner and each limited partner who will invest in the Partnership ("Limited Partners").

4. The Limited Partners will be highly compensated key employees of ML&Co or its affiliates. Each Limited Partner will be required to have had an annual income of $150,000 in the year prior to the formation of the Partnership, and reasonably expect to have annual income of $150,000 in the first year of the Partnership's operation. The income test for participation in the Partnerships will be revised annually to reflect cost of living increases, if any. No more than 35 Limited Partners will be persons who are not "accredited investors" under subsection (4), (5), or (6) of Rule 501(a) of Regulation D under the Securities Act of 1933.

5. In addition to being experienced professionals in the investment banking and securities business, or in administrative, financial and accounting, legal or operational activities related thereto, the Limited Partners will be sophisticated investors able to fend for themselves without benefit of regulatory safeguards. All Limited Partners will be aware that (a) interests in the Partnerships will be sold in a transaction exempt under section 4(2) of the Securities Act of 1933 (the "1933 Act"), and thus, are offered without registration under the 1933 Act; and (b) although registered under the 1940 Act, the Partnerships will be exempt from most provisions of the 1940 Act.

6. The Partnerships will enable key employees of ML&Co and certain of ML&Co's affiliates to pool their investment resources and to receive the benefit of certain investment opportunities that come to the attention of ML&Co and its affiliates. The

investment opportunities in which the Partnerships will participate are comprised of companies which are targets of leveraged or management buyouts structured by Merrill Lynch, or with respect to which Merrill Lynch assisted in the consummation, and in which Merrill Lynch has a long-term equity or equity-related investment, and companies which are the subject of other transactions, such as real estate or venture capital transactions, structured by ML&Co's banking group and in which Merrill Lynch has a long-term equity-related investment (collectively the "Merrill Lynch Investments").

7. Each Partnership will enter into an agreement with ML&Co (the "ML&Co Agreement") to ensure that, with limited exceptions, *see* ¶¶12–15, *infra*, each Partnership will be able to acquire an interest in every Merrill Lynch Investment. Under the ML&Co Agreement, unless the Executive Committee of the Board of Directors of ML&Co ("the ML&Co Executive Committee") approves a determination by the General Partner that a partnership not participate in a particular investment, each Partnership will be obligated to purchase from Merrill Lynch, and Merrill Lynch will be obligated to sell to the Partnership, a fixed percentage (determined at the time each Partnership Agreement is executed) of each Merrill Lynch Investment that closes during the calendar year of the Partnership's formation (hereinafter the "Investment Period") or during a period (not in excess of twelve months) subsequent to the end of the Investment Period for the most recently organized Partnership. If Merrill Lynch Investments have closed during the calendar year in which a Partnership is formed but prior to its formation, the Partnership will purchase Portfolio Investments from ML&Co when the Partnership is initially funded ("Initial Portfolio Investments").

8. To assure each Partnership that it will benefit from the continued ownership of an investment for as long as Merrill Lynch retains an interest, each ML&Co Agreement will provide that, except as discussed in this paragraph, a Partnership may not sell any security purchased under the ML&Co Agreement as long as ML&Co or any direct or indirect wholly-owned affiliate of ML&Co has an investment in the same security, absent the consent of the ML&Co Executive Committee. Each Partnership also will be required to participate in any public or private sale by ML&Co and/or any wholly-owned affiliate of securities owned by them or for their benefit which are identical to securities held by the Partnership, unless the ML&Co Executive Committee approves a determination by the General Partner that the Partnership not participate in a particular sale. If Merrill Lynch proposes to sell only a portion of securities held by ML&Co or any direct or indirect wholly-owned affiliate of ML&Co which are identical to securities held by the Partnership, the Partnership will be obligated, unless the ML&Co Executive Committee consents otherwise, to sell such securities in numbers bearing the same percentage relationship to the total number of shares held by the Partnership as the number of shares to be sold by Merrill Lynch bears to the total number of shares held by ML&Co and any direct or indirect wholly-owned affiliates of ML&Co.

9. Although each Partnership will be required to purchase Merrill Lynch Investments where ML&Co, its wholly owned affiliates, or other affiliates (such as other partnerships established by ML&Co) participate in such investments, the policy governing sales of securities will not require Partnership participation in sales by such other affiliates in which ML&Co or its wholly owned affiliates do not participate. The rationale underlying the differing requirements is that while ML&Co has the ability to make all Merrill Lynch Investments available to the Partnerships, ML&Co and its wholly owned affiliates may not have the authority to require that a non-wholly owned affiliate permit a Partnership to participate in its disposition of such investments.

10. ML&Co's Executive Committee will have no involvement in disposition decisions where the Merrill Lynch Investment is held by a Partnership and a non-wholly owned affiliate, but not by ML&Co or a wholly owned affiliate. In such circumstances, the timing of the disposition will be determined by the General Partner in the exercise of its fiduciary responsibilities.

11. Pending investment in a Merrill Lynch Investment, Partnership funds will be temporarily invested in: (a) United States Government obligations with maturities of no more than one year; (b) high grade commercial paper with maturities of no more than six months; (c) interest-bearing deposits in United States or Canadian banks having an unrestricted surplus of at least $250 million, if such deposits mature within one year; or (d) any money market fund distributed and managed by Merrill Lynch (each such investment, a "Temporary Investment"). Temporary Investments will be purchased from, and sold to, ML&Co and its affiliates at market value without the payment of any fee. Consistent with section 12(d)(1)(A)(i) of the 1940 Act, no Partnership will acquire more than 3% of the total outstanding voting stock of any investment company. Also, the General Partner may temporarily invest any portion of Partnership funds attributable to its own capital contributions by making unsecured demand loans to Merrill Lynch for working capital purposes. Such a loan would be made at a return rate equal to the General Partner's Preferred Return (defined *infra*, ¶18).

12. Certain funds managed by Merrill Lynch (the "Designated Funds"), certain investment partnerships controlled by ML&Co for the benefit of ML&Co employees (the "Designated Employee Funds"), and certain investment subsidiaries of ML&Co ("Designated Subsidiaries") will not be obligated under the ML&Co Agreements to sell Merrill Lynch Investments to the Partnerships.

13. The Designated Funds include certain leveraged buyout funds established by ML&Co, the investors of which are limited partners unaffiliated with ML&Co. Because of certain provisions in the documents establishing the Designated Funds, ML&Co lacks the ability to compel the sale of any of their portfolio securities to the Partnerships. However, because ML&Co is required under the terms of such documents to co-invest with the Designated Funds in each buyout portfolio company, and since under the ML&Co Agreement ML&Co will be obligated to sell a portion of those securities to each Partnership, the Partnerships will be able to acquire interests in such investments indirectly.

14. The Designated Employee Funds are comprised of other present and future investment partnerships controlled by ML&Co for the benefit of Merrill Lynch employees, including for example, employees' securities companies managed by KECALP Inc., a subsidiary of ML&Co. Pursuant to the terms under which the Designated Employee Funds were established, ML&Co also lacks the ability to compel such funds to sell securities to the Partnerships. Accordingly, each ML&Co Agreement will except these funds from the obligation to sell Merrill Lynch Investments to the Partnership.

15. The Designated Subsidiaries at present include one ML&Co subsidiary, Merrill Lynch Interfunding Inc. ("Interfunding"). Interfunding invests in a combination of debt and equity, in which the percentage of equity is not

meaningful in relationship to the debt. In contrast, the Partnerships will invest virtually all of their capital in equity securities.

16. Each Partnership will acquire Merrill Lynch Investments at a price equal to the lower of: (a) The value of the investment on the date the Partnership acquires such investment, as determined by the board of directors of the General Partner; or (b) the cost to ML&Co to purchase and carry the investment. ML&Co's carrying costs consist of interest charges, compounded semi-annually, computed at the lower of (i) the Prime Rate during the period for which carrying costs are being paid or (ii) the effective cost of borrowing by ML&Co during such period. The effective cost of borrowing by ML&Co is its actual "Average Cost of Funds," which ML&Co calculates on a monthly basis by dividing its consolidated financing expenses by the total amount of borrowing during the period.

17. The General Partner, in addition to performing all management and administrative services necessary for the operation of the Partnerships, will make a substantial investment in each Partnership. Upon the formation of a Partnership, the General Partner will contribute 1.01% of the total cash contributions made by the Limited Partners. Thereafter, at the time of each investment by the Partnership, the General Partner will make an additional capital contribution to the Partnership, essentially in the form of a loan, equal to at least 84.84% of the aggregate amount which the Partnership proposes to invest. The exact percentage that the General Partner will contribute, which will be in aggregate no less than 85%, will be fixed by each Partnership Agreement.

18. Partnership profits (excluding those derived from Temporary Investments) will be allocated as follows: First, to the General Partner in an amount necessary to provide it a cumulative per annum return on its capital contribtions to the Partnership (taking into account profits on Temporary Investments) not exceeding the prime rate plus a maximum of 250 basis points, compounded semi-annually and measured from the date such capital contributions are made through the dates such capital contributions are distributed to the General Partner (the "Preferred Return"); second, to the General Partner and the Limited Partners to offset any previously allocated losses; third, if the Partnership has made any Initial Portfolio Investments, to the Limited Partners pro rata until they have been allocated a Special Distribution Amount (as defined in the Partnership Agreement) which includes amounts to be paid by the Limited Partners for any Federal, state and local income taxes which may arise from the valuation of the Initial Portfolio Investments; and fourth, 90% to the Limited Partners pro rata in proportion to their capital contributions, and 10% to the General Partner.

19. Partnership losses not derived from Temporary Investments will be allocated: First, to the Limited Partners and General Partner to offset any previously allocated profits (other than the Preferred Return); second, 90% to the Limited Partners pro rata in proportion to their contributions to the Partnership and 10% to the General Partner, to the extent that such allocation would not cause the Limited Partners to have deficit balances in their capital accounts; and third, to the General Partner.

20. Profits and losses of a Partnership derived from Temporary Investments of capital contributions will be allocated pro rata to the partners making such contributions.

21. The General Partner maintains that the allocation of profits and losses to it reflects an appropriate return on capital invested, in light of the risks involved, and does not represent compensation for investment advisory services. The General Partner believes that its capital contribution is functionally equivalent to providing loans to the Partnerships. As a result, the terms of the allocations to the General Partner are more favorable to the Limited Partners, and less favorable to it, than equivalent investment opportunities available to the General Partner in public and private marketplaces.

22. The General Partner further believes that its position as to the fairness of the allocations is supported by the risk characteristics of its capital contribution. The General Partner is contributing at least 85% of the capital of the Partnership, and consequently can incur significantly greater losses than the Limited Partners because it has a significantly greater amount of capital at stake. The contribution of the General Partner ensures that the interests of the Limited Partners will be safeguarded when investment decisions are made.

23. All of the General Partner's directors and principal officers will be directors or officers of Merrill Lynch, and a majority of such directors and principal officers will be Eligible Employees. MBP represents that no compensation will be paid to the General Partner, its officers, or directors for providing services to the Partnership. Each Partnership, however, will bear all direct expenses incurred in connection with its organization, business operations, winding up, and liquidation.

24. The General Partner will register as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The General Partner believes that its relationships with the Partnerships will fully comply with the provisions of the Advisers Act.

25. The Limited Partners may remove a General Partner upon the approval of two-thirds of the entire ownership interest of the Limited Partners. The Limited Partners may elect to continue the Partnership following such removal.

26. Except with the consent of the General Partner, all Partnership interests will be non-transferable. To maintain the community of interest among all partners, the General Partner will not consent to transfers other than to members of the transferor's immediate family, other Limited Partners, or the General Partner, except in cases of incompetency, insolvency, incapacity, or bankruptcy. In such cases, a Limited Partner's estate or legal representative would succeed to his interest.

27. If, for any reason except long-term disability, a Limited Partner ceases to be an active, full-time employee of Merrill Lynch (a "Departing Partner") within a time period specified in the Partnership Agreement (not to exceed 5 years from the closing of the offering of Partnership interests), the General Partner will have the option to purchase all or some of the Departing Partner's interest. In connection with this option, each Partnership Agreement will contain a phased vesting provision, designed to reward longer term employees, whereby the maximum percentage of a Departing Partner's interest which may be purchased by the General Partner will decrease with each year following the closing date. If the General Partner exercises this option, the Departing Partner generally will receive an amount equal to the capital contributions paid on the repurchased portion of the interest that have not previously been returned to him, plus interest at the prime rate. Thus, the Departing Partner will lose any interest in undistributed profits of the Partnership with respect to the repurchased portion of his interest. No interest will be paid to a Departing Partner who was terminated for "cause," as defined in the Partnership Agreement.

28. Each Partnership will send audited annual financial statements to the Limited Partners within 90 days of the

end of the fiscal year, or as soon as practicable thereafter. A report also will be transmitted to each Limited Partner disclosing information concerning his share in the Partnership's taxable income or loss for each year, together with a copy of the Partnership's federal income tax return.

29. Each Partnership also will permanently maintain and preserve such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Limited Partners. The General Partner will permanently maintain and preserve all accounts, books, and other documents as are necessary or appropriate to record its transactions with the Partnership. All such accounts, books, and other records maintained by the Partnership and/or the General Partner will be subject to examination by the Commission or its staff.

Applicant's Legal Analysis

30. On behalf of the Partnerships, Applicant requests exemption from all provisions of the 1940 Act except sections 7, 8(a), and 9, the provisions of section 17 except as described below, sections 36 through 53, and the rules and regulations related to these sections. Applicant also requests exemptions from sections 17(a), 17(d), 17(f), 17(g) and 17(j) of the 1940 Act and Rules 17d–1, 17f–1, 17g–1 and 17j–1 thereunder.

31. Applicant requests an exemption from section 17(a) of the 1940 Act to the extent necessary to permit ML&Co or its affiliates to engage in certain transactions as principal with a Partnership. The exemption is requested to permit the Partnerships to purchase Portfolio Investments from ML&Co, or any other affiliated company, partnership, person or other entity (an "Affiliated Entity") on a principal basis. Such relief is requested to avoid the necessity of a Partnership participating as an additional purchaser in complex leveraged buyout negotiations, to permit a Partnership to purchase Initial Portfolio Investments from ML&Co when a Merrill Lynch Investment has closed prior to, but in the same year as, the Partnership's formation, and to permit a Partnership to purchase subsequent Portfolio Investments pursuant to the ML&Co Agreement. The exemption from section 17(a) is also requested to permit the Partnerships to purchase interests or property in a company or other investment vehicle in which ML&Co, or an Affiliated Entity, already owns securities, or where such company or other investment vehicle is otherwise affiliated with ML&Co, or a Partnership; sell, put, or tender, or grant options in securities or interests in a company or other investment vehicle back to such entity, where that entity is affiliated with ML&Co, or an Affiliated Entity; participate as a selling security holder in a public offering that is underwritten by ML&Co or an Affiliated Entity or in which ML&Co or an Affiliated Entity acts as a member of the underwriting or selling group; and make short term temporary investments where such investments will be purchased from, and sold to, ML&Co, or an Affiliated Entity.

32. Applicant also requests an exemption from section 17(d) of and Rule 17d–1 under the 1940 Act to permit the Partnerships to engage in transactions in which affiliated persons of the Partnerships also may be participants. Applicant states that such order is necessary in view of the fact that the Partnerships will be required to invest their capital contributions in Merrill Lynch Investments in which ML&Co or an Affiliated Entity will retain an interest.

33. Applicant submits that the exemptions requested pursuant to section 6(b) of the 1940 Act are consistent with the protection of investors. The exemptions are being requested because they are considered necessary or relevant to the operations of the Partnerships as an investment program uniquely adapted to the needs of employees of ML&Co. Applicant further submits that the requested relief is consistent with the legislative history relating to employees' securities companies.

In support of these contentions, Applicant cites the nature of the Partnerships as employees' securities companies under the 1940 Act and their intended manner of operation.

34. Applicant further submits that a substantial community of economic and other interests exists among ML&Co and the Limited Partners which obviates the need for protection of investors under the 1940 Act. The Partnerships were conceived and will be organized and managed by persons who will be investing in the Partnerships, and will not be promoted by persons seeking to profit from fees or investment advice or from the distribution of securities. Applicant also submits that the terms of the proposed affiliated transactions will be reasonable and fair and free from overreaching, and will be consistent with the policy of each registered investment company concerned.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–28375 Filed 12–3–90; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Senior Executive Service Performance Review Board; List of Members

AGENCY: Small Business Administration.

ACTION: Listing of personnel serving as members of this agency's senior executive service performance review boards.

SUMMARY: Section 4314(c)(4) of title 5, U.S.C. requires Federal agencies publish notification of the appointment of individuals who serve as members of that Agency's Performance Review Boards (PRB). The following is a listing of those individuals currently serving as members of this Agency's PRB:

1. Johnnie L. Albertson, Deputy to the Associate Deputy Administrator for Special Programs
2. Michael P. Forbes, Assistant Administrator for Congressional and Legislative Affairs
3. Michael Howland, District Director, San Francisco District Office
4. Bernard Kulik, Assistant Administrator for Disaster Assistance
5. Catherine Marschall, Associated Deputy Administrator for Special Programs
6. Sally B. Narey, General Counsel
7. Richard L. Osbourn, Director of Personnel
8. George H. Robinson, Director, Equal Employment Opportunity and Compliance
9. Lawrence R. Rosenbaum, Comptroller
10. John Whitmore, Deputy Associate Administrator for Programs (MSB & COD)
11. Lejuene Wilson, Regional Administrator, Dallas.

Dated: November 27, 1990.

Susan Engeleiter,

Administrator.

[FR Doc. 90–28403 Filed 12–3–90; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket S-874]

American President Lines, Ltd.; Application for Modification of Section 804 Waiver To Operate Foreign-Flag Feeder Vessels

APL, by letter of November 26, 1990, requests that the section 804 waiver granted on June 3, 1988, and amended October 11, 1989, be further amended. The waiver, among other things, permitted APL to own or charter and operate one 350 FEU foreign-flag vessel between Fujayrah or Khor al Fakkan and the Persian Gulf-Gulf of Oman (Dubai, Ad Dammam, Al Kuwayt, Bahrain, Masqat, and inducement ports). The requested amendment would modify the waiver so as to allow APL to supplement its service to the Persian Gulf-Gulf of Oman service area by calling Damman or other Persian Gulf ports with vessels employed in APL's west coast India service area feeder. The current waiver is effective until June 3, 1993.

APL advises that due to the demands of Operation Desert Shield, it is experiencing capacity constraints on its foreign-flag feeder shuttle between Fujayrah in the United Arab Emirates, Damman in Saudi Arabia, and Bahrain. Weekly sailings are presently performed between those ports by the 350 FEU EAGLE WORLD.

APL states that in the event demand exceeds the capability of the EAGLE WORLD, it plans to supplement its service to the Persian Gulf-Gulf of Oman service area by calling Damman with vessels employed in its west coast India service area feeder. The west coast India feeder, also authorized in the above referenced June 3, 1988, waiver of section 804 of the Merchant Marine Act, 1936, as amended (Act), which permits two 400 FEU ships, is now being performed by the EAGLE NOVA and the EAGLE STAR, sister ships with a capacity of approximately 205 FEU. Each of these vessels sails fortnightly between Fujayrah and Bombay, India. According to APL, there is slack in the vessels' schedule and Damman can be added without disrupting service between Fujayrah and Bombay. The resulting deployment, APL adds, would be Fujayrah-Bombay-Fujayrah-Dammam-Fujayrah.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on December 11, 1990. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operation-Differential Subsidies))

By Order of the Maritime Administrator.

Dated: November 29, 1990.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 90-28397 Filed 12-3-90; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

U.S. Customs Service

[T.D. 90-93]

Cancellation "With Prejudice" of Broker License No. 5616, Keith Kim, d.b.a. Alpha Cargo Service

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that the Secretary of the Treasury on November 29, 1990, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and parts 111.51(b) and 111.74 of the Customs Regulations, as amended (CFR 111.51(b), 111.74), cancelled "with prejudice" the individual broker license (No. 5616) issued to Mr. Keith Kim.

Dated: November 29, 1990.

William Luebkert,

Deputy Director, Office of Trade Operations.

[FR Doc. 90-28390 Filed 12-3-90; 8:45 am]

BILLING CODE 4820-02-M

Fiscal Service

Bureau of the Public Debt

Privacy Act of 1974, as Amended; Proposed New System of Records

AGENCY: Fiscal Service, Bureau of the Public Debt, Treasury.

ACTION: Notice of new system of records: Treasury/BPD .005—Employee Assistance Records.

SUMMARY: The purpose of this document is to give notice under the provisions of the Privacy Act of 1974, as amended, that the Bureau of the Public Debt proposes to add a new system of records: Treasury/BPD .005—Employee Assistance Records. Public Debt's systems of records were last published on March 1, 1988, at 53 FR 6252. The new system will contain information on Public Debt employees who are being or have been counseled, either by self-referral or supervisory-referral, for alcohol or drug abuse or for emotional or other personal problems. Where applicable, this system will also contain records of an employee's family members who have utilized the services of the EAP as part of the employee's counseling or treatment process.

DATES: Comments must be received no later than January 3, 1991. The new system of records will become effective February 4, 1991 unless comments dictate otherwise.

ADDRESSES: Send any comments to D. Louise Bennett, Disclosure Officer, Bureau of the Public Debt, E Street Building, room 553, Washington, DC 20239-0001. Copies of all written comments will be available for public inspection and copying at the Department of the Treasury Library, room 5030, Main Treasury Building, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: D. Louise Bennett, Disclosure Officer (202) 376-4307.

SUPPLEMENTARY INFORMATION: This new system of records contains information pertaining to drug abuse counseling or treatment. In addition, it contains records that pertain to other kinds of counseling; e.g., for alcohol, emotional, or other personal problems. Records pertaining to testing of employees for use of illegal drugs under Executive Order 12564, and related documents are part of the Office of Personnel Management's Governmentwide system OPM/GOVT-10, Employee Medical File System Records. The system will not infringe upon any individual's privacy rights because of the security protections and the disclosure restrictions imposed by the Privacy Act.

A new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Office of Management and Budget (OMB) and Congress pursuant to Appendix I to OMB Circular A-130, "Federal Agency Responsibilities for Maintaining Records

About Individuals," dated December 12, 1985.

Treasury/BPD .005

SYSTEM NAME:

Employee Assistance Records.

SYSTEM LOCATION:

Bureau of the Public Debt, 300–13th Street, SW., Washington, DC 20239; 200 Third Street, Parkersburg, West Virginia 26106; and Elwood and Race Streets, Ravenswood, West Virginia 26164. This system also covers Public Debt employee assistance records that are maintained by another Federal, State, or local government, or contractor under an agreement with Public Debt to provide the Employee Assistance Program (EAP) functions. The system location of entities under an agreement with Public Debt is available from the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Public Debt employees and former employees who will be or have been counseled, either by self-referral or supervisory-referral regarding drug abuse, alcohol, emotional health, or other personal problems. Where applicable, this system also covers family members of these employees when the family member utilizes the services of the EAP as part of the employee's counseling or treatment process.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records of each employee and, in some cases family members of the employee, who have utilized the Employee Assistance Program for a drug, alcohol, emotional, or personal problem. Examples of information which may be found in each record are the individual's name, social security number, date of birth, grade, job title, home address, telephone numbers, supervisor's name and telephone number, assessment of problem, and referrals to treatment facilities and outcomes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 7361, 7362, 7904; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be disclosed:

(1) To an entity under contract with Public Debt for the purpose of providing the EAP functions.

(2) To medical personnel to the extent necessary to meet a bona fide medical emergency in accordance with the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 CFR part 2).

(3) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, provided individual identifiers are not disclosed in any manner, in accordance with the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 CFR part 2).

(4) To a third party upon authorization by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor, in accordance with the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 CFR part 2).

(5) To the Department of Justice or other appropriate Federal agency in defending claims against the United States when the records are not covered by the Confidentiality of Alcohol and Drug Abuse Patient Records regulations at 42 CFR part 2.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

These records are retrieved by the name and social security number of the individual on whom they are maintained.

SAFEGUARDS:

Records are stored in locked safes with combination locks. Only individuals with a need-to-know have access. Automated records are protected by restricted access procedures. Access to records is strictly limited to agency or contractor officials with a bona fide need for the records. These records are always maintained apart from any other system of records.

When Public Debt contracts with an entity for the purpose of providing the EAP functions, the contractor shall be required to maintain Privacy Act safeguards with respect to such records. The contractor will surrender to Public Debt all of these records as well as any new records at the time of contract termination. Also, when the disclosure of records is requested, the contractor will not make the determination about whether the records may be disclosed.

RETENTION AND DISPOSAL:

The retention period is 3 years after termination of counseling or until any litigation is resolved. If an employee is no longer employed by Public Debt, records are retained for 3 years after the official date of termination. Then the records are destroyed.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Personnel Management, Bureau of the Public Debt, 300 13th Street, SW., Washington, DC 20239–0001.

NOTIFICATION PROCEDURE:

Address inquiries and initial requests for correction of records to: Director, Division of Personnel Management, Bureau of the Public Debt, 300 13th Street, SW., Washington, DC 20239–0001.

RECORD ACCESS PROCEDURES:

Individuals who wish to request access to records relating to them or who wish to request correction of records they believe to be in error should submit such requests pursuant to the procedures set out below in compliance with the applicable regulations (31 CFR part 1 subpart C). Requests which do not comply fully with these procedures may result in noncompliance with the request, but will be answered to the extent possible.

Requests for Access to Records: (1) A request for access to records must be in writing, signed by the individual concerned, identify the system of records, and clearly indicate that the request is made pursuant to the Privacy Act of 1974. At least two items of identification must be furnished; e.g., date of birth; social security number; dates of employment, if request is by employees; relationship to employee, if request is by family member; or similar information. Public Debt reserves the right to require additional verification of an individual's identity. (2) The request is to be submitted to the Director, Division of Personnel Management, Bureau of the Public Debt, 300 13th Street, SW., Washington, DC 20239–0001. (3) The request must state whether the requester wishes to be notified that the records exists or desires to inspect or obtain a copy of the record. If a copy of the record is desired, the requester must agree to pay the fees for copying the documents in accordance with 31 CFR part 1 subpart C. (4) Requests for records concerning a deceased or incapacitated individual must be accompanied either by evidence of the requester's appointment as legal representative of the estate or by a notarized statement attesting that no such representative has been appointed and giving the nature of the relationship

between the requester and the individual.

Requests for Correction of Records: (1) A request by an individual for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that the request is made pursuant to the Privacy Act of 1974. At least two items of identification must be furnished; e.g., date of birth; social security number; dates of employment, if request is by employee; relationship to employee, if request is by family member; or similar information. Public Debt reserves the right to require additional verification of an individual's identity. (2) The initial request is to be submitted to the Director, Division of Personnel Management, 300 13th Street, SW, Washington, DC 20239-0001. (3) The request for correction should specify: (a) The dates of records for correction should specify: (a) The dates of records in question, (b) the specific records alleged to be incorrect, (c) the correction requested, and (d) the reasons therefore. (4) The request must include any available evidence in support of the request.

Appeals from an Initial Denial of a Request for Correction of Records: (1) An appeal from an initial denial of a request for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that it is made pursuant to the Privacy Act of 1974. At least two items of identification must be furnished; e.g., date of birth; social security number; dates of employment, if request is by employee; relationship to employee, if request is by family member; or similar information. Public Debt reserves the right to require additional verification of an individual's identity. (2) Appellate determinations will be made by the Commissioner of the Public Debt or the delegate of such officer. Appeals should be addressed as follows: Privacy Act Amendment, Chief Counsel, Bureau of the Public Debt, Department of the Treasury, 999 E. Street, NW., Room 503, Washington, D.C. 20239 (or as otherwise provided for in the applicable appendix to 31 CFR part 1 subpart C), within 35 days of the individual's receipt of the initial denial of the requested correction. (3) An appeal must also specify: (a) The records to which the appeal relates, (b) the date of the initial request made for correction of the records, and (c) the date that the initial denial of the request for correction was received. (4) An appeal must also specify the reasons for the requester's disagreement with that initial denial of correction and must include any applicable supporting evidence.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" and "Record Access Procedures."

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies, the supervisor of the individual if the individual was referred by a supervisor, or the Employee Assistance Program staff member who records the counseling session.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: November 27, 1990.

Linda M. Combs,

Assistant Secretary of the Treasury (Management).

[FR Doc. 90-28325-Filed 12-3-90; 8:45 am]

BILLING CODE 4810-40-M

Office of Thrift Supervision

Action Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Action Federal Savings Bank, Somers Point, New Jersey on November 15, 1990.

Dated: November 28, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-28394 Filed 12-3-90; 8:45 am]

BILLING CODE 6720-01-M

Action Savings Bank, S.L.A.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(C) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Action Savings Bank, S.L.A., Somers Point, New Jersey on November 15, 1990.

Dated: November 28, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-28395 Filed 12-3-90; 8:45 am]

BILLING CODE 6720-01-M

[AC-66; OTS No. 1620]

Colonial Federal Savings Bank, Bellefontaine, OH; Final Action; Approval of Conversion Application

Notice is hereby given that on November 9, 1990, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of Colonial Federal Savings Bank, Bellefontaine, Ohio, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, 2000 Atriun TWO, 221 East 4th Street, Cincinnati, Ohio 45201-0598.

Dated: November 21, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc 90-28391 Filed 12-3-90; 8:45 am]

BILLING CODE 6720-01-M

[AC-64; OTS No. 0531]

Northwestern Savings and Loan Association, Chicago, IL; Final Action; Approval of Conversion Application

Notice is hereby given that on November 13, 1990, the office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to the delegated authority, approved the application of Northwestern Savings and Loan Association, Chicago, Illinois, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and District Director, Office of Thrift Supervision of Chicago, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601.

Dated: November 21, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-28392 Filed 12-3-90; 8:45 am]

BILLING CODE 6720-01-M

[AC-65; OTS No. 5759]

Thomaston Federal Savings Bank, Thomaston, Georgia; Final Action; Approval of Conversion Application

Notice is hereby given that on November 5, 1990, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of Thomaston Federal Savings Bank, Thomaston, Georgia, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, Atlanta District Office, 1475 Peachtree Street, NE., Atlanta, Georgia 30348-5217.

Dated: November 21, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-28393 Filed 12-3-90; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Performance Review Board Members

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: This Notice is issued to revise the membership of the United States Information (USIA) Performance Review Board.

DATES: December 4, 1990.

FOR FURTHER INFORMATION CONTACT:

Ms. Johnnie Lindahl (Co-Executive Secretary), Deputy Director, Office of Personnel, Voice of America, U.S. Information Agency, 330 Independence Avenue, SW., Washington, DC 20547, Tel: (202) 619-3763

or

Ms. Patricia Noble (Co-Executive Secretary), Chief, Domestic Personnel Division, Office of Personnel, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, Tel: (202) 619-4617

SUPPLMENTARY INFORMATION: In accordance with section 4314(c) (1) through (5) of the Civil Service Reform Act of 1978 (Pub. L. 95454), the following list supersedes the U.S. Information Agency Notice (54 FR 222, November 20, 1989).

Chairperson: Associate Director for Management—Henry E. Hockeimer (Presidential Appointee)

Deputy Chairperson: Associate Director for Broadcasting—Richard Carlson (Presidential Appointee)

Career SES Members

Eileen K. Binns, Director, Office of Administration

Richard J. Caldwell, Director, Office of Networks and Communications, Television and Film Service

Robert T. Coonrod, Deputy Director, Voice of America

Sidney A. Davis, Director of Programs, Voice of America

James R. Hulen, Deputy for Operations, Office of Engineering and Technical Operations, Voice of America

Philip R. Rogers, Director, Office of Contracts

Alternate Career SES Members

Donald J. Cuozzo, Worldnet Production Manager, Television and Film Service

Robert E. Kamosa, Deputy for Projects Management, Office of Engineering and Technical Operations, Voice of America

This supersedes the previous U.S. Information Agency Notice (54 FR 222, November 20, 1989).

Henry E. Hockeimer,

Associate Director for Management, U.S. Information Agency.

[FR Doc. 90-28402 Filed 12-3-90; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 233
Tuesday, December 4, 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).

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR COMMISSION

Meeting

Notice is hereby given in accordance with section 552b of title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, January 10, 1991.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 p.m. at Cumberland Town Hall, 45 Broad Street, Cumberland, Rhode Island for the following reasons:

1. Report of the Chairman
2. Report of the Executive Director
3. Committee Reports
4. Report on the Town of Cumberland
5. Policy Proposals
6. Report of the Narragansett Bay Commission
7. Public Comments

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: James Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 34, Uxbridge, MA 01569. Telephone (508) 278–9400.

Further information concerning this meeting may be obtained from James Pepper, Executive Director of the Commission at the address below.

Shirley Cleaves,

Executive Director, Blackstone River Valley National Heritage Corridor Commission.

[FR Doc. 90–28548 Filed 11–30–90; 3:48 pm]

BILLING CODE 4310-70-M

COMMISSION ON CIVIL RIGHTS

DATE AND TIME: Friday, December 7, 1990, 9:00 a.m.–5:00 p.m.

PLACE: 1121 Vermont Avenue, NW., room 512, Washington, DC 20425.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of the Agenda
II. Approval of Minutes of November Meeting
III. Announcements
IV. State Advisory Committee Report: Implementation in Arizona of the Immigration Reform and Control Act
V. State Advisory Committee Appointments
  a. Illinois Appointments
  b. Interim Nevada Appointment
  c. Interim Colorado Appointment
VI. Staff Director's Report
VII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376–8312.

Dated: December 7, 1990.

Carol McCabe Booker,

General Counsel.

[FR Doc. 90–28544 Filed 11–30–90; 3:48 pm]

BILLING CODE 6335-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, December 7, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR FURTHER INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90–28481 Filed 11–30–90; 10:58 am]

BILLING CODE 6351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Thursday, November 29, 1990, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), Vice Chairman Andrew C. Hove, Jr., and Chairman L. William Seidman, that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum and resolution re: Final amendments to Part 325 of the Corporation's rules and regulations, entitled "Capital Maintenance," which amendments would ensure that limits are placed on the amount of purchased mortgage servicing rights that State nonmember banks and savings associations can recognize for regulatory capital purposes.

By the same majority vote, the Board further determined that no notice earlier than November 27, 1990 of this change in the subject matter of the meeting was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: November 30, 1990.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 90–28549 Filed 11–30–90 3:49 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Thursday, November 29, 1990, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), concurred in by Director Robert L. Clarke (Comptroller of the Currency), Vice Chairman Andrew C. Hove, Jr., and Chairman L. William Seidman, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Recommendation regarding an assistance agreement with a depository institution.
Matters concerning a certain failed depository institution.
Matters relating to the Corporation's supervisory activities.

The Board further determined, by the same majority vote, that no earlier

notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B).

Dated: November 30, 1990.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 90-28550 Filed 11-30-90 3:49 pm]

BILLING CODE 6714-01-M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, December 12, 1990 at 10:30 a.m.

PLACE: Room 101, 500 E Street, S.W.,

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. No. 731-TA-473 (P) (Certain Electric Fans from the The People's Republic of China)—briefing and vote.
6. Inv. No. 731-TA-474 & 475 (P) (Chrome-Plated Lug Nuts from The People's Republic of China and Taiwan)—briefing and vote.
7. Any items left over from pervious agenda

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: November 23, 1990.

Kenneth Mason,

Secretary.

[FR Doc. 90-28552 Filed 11-30-90; 3:51 am]

BILLING CODE 7020-02-M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: A meeting of the Board of Directors will be held on December 11, 1990. The meeting will commence at 9:00 a.m.

PLACE: The Madison Hotel, 15th and M Streets, NW., The Executive Chambers, Washington, DC 20005, 202-862-1600.

STATUS OF MEETING: Open [A portion of the meeting may be closed, subject to a vote by a majority of the Board of Directors, to discuss personnel, privileged or confidential, personal, investigatory and litigation matters under the Government in the Sunshine Act [5 U.S.C. 552b (c) (2), (4), (5), (7), and (10) and 45 CFR 1622.5 (a), (c), (d), (e), (f), and (h)].

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes.
   —September 23-24, 1990
3. Election of Chairman and Vice-Chairman.
4. Report from Board Members.
5. President's Report.
6. Legislative Report.
7. Report on the Fiscal Year (FY) 1991 Consolidated Operating Budget.
8. Presentation and Discussion of Proposals for FY 1992 Budget Mark.
9. Report on 1991 Application for Funding.
10. Report on the Potential for Self-Help within Legal Services, by William Fry of the National Training Center.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date Issued: November 30, 1990.

Maureen R. Bozell,

Corporation Secretary.

[FR Doc. 90-28851 Filed 11-30-90; 3:50 pm]

BILLING CODE 7050-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 3, 10, 17, and 24, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 3

Friday, December 7

10:00 a.m.
Briefing on Level of Design Detail for Part 52 (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 10—Tentative

Thursday, December 13

9:00 a.m.
Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Transmittal of Revised Part 20 (Tentative)

Week of December 17—Tentative

Monday, December 17

8:30 a.m.
Collegial Discussion of Items of Commissioner Interest (Public Meeting)

10:00 a.m.
Briefing on EEO Program (Public Meeting)

Tuesday, December 18

10:00 a.m.
Briefing by DOE on Status of Civilian High Level Waste Program (Public Meeting)

Wednesday, December 19

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 24—Tentative

There are no meetings scheduled for the Week of December 24.

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: November 29, 1990.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 90-28524 Filed 11-30-90; 2:51 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 55, No. 233
Tuesday, December 4, 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 AGRICULTURE

Commodity Credit Corporation

Loan and Purchase Programs: Transportation Assistance Refunds

Correction

In notice document 90-26799 appearing on page 47500, in the issue of Wednesday, November 14, 1990, make the following corrections:

1. In the first column, under **SUMMARY:**, in the sixth and seventh lines, "FCC drive" should read "CCC price".

2. In the same column, under **FOR FURTHER INFORMATION CONTACT:**, in the second line, "USDA-SACS," should read "USDA-ASCS,".

3. In the second column, in the 13th line, "Affected" should read "Acquired".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1944

Forms SF 424.1, Application for Federal Assistance (For Non-construction)," and SF 424.2, "Application for Federal Assistance (For Construction)"

Correction

In rule document 90-8238 beginning on page 13502, in the issue of Wednesday, April 11, 1990, make the following correction:

On page 13503, in the second column, in amendatory instruction 8(a), in the second line, "§§ 1944.525(d)(2)," should read "§§ 1944.526(d)(2),".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Food and Safety Inspection Service

9 CFR Parts 317 and 381

[Docket No. 87-025F]

RIN 0583-AA69

New Weight Labeling of Meat and Poultry Products

Correction

In rule document 90-28126 beginning on page 49826 in the issue of Friday, November 30, 1990, under **EFFECTIVE DATE**, "May 29, 1990." should read "May 29, 1991." each time it appears.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 303

RIN 0970-AA78

Child Support Enforcement Program; Federal Parent Locator Service Fees

Correction

In proposed rule document 90-26877 beginning on page 47777, in the issue of Thursday, November 15, 1990, make the following correction:

§ 303.70 [Corrected]

On page 47779, in § 303.70(e)(2)(iii), in the third column, in the second line "453(3)(2)" should read "453(e)(2)".

BILLING CODE 1505-01-D

federal register

Tuesday
December 4, 1990

Part II

Department of Education

Office of Special Education and Rehabilitative Services

National Institute on Disability and Rehabilitation Research; Final Funding Priorities for Fiscal Years 1991–1992; and Invitation for Applications for New Awards Under Certain Programs for Fiscal Year 1992; Notices

DEPARTMENT OF EDUCATION

Final Funding Priorities for the National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for the National Institute on Disability and Rehabilitation Research for fiscal years 1991–1992.

SUMMARY: The Secretary of Education announces final funding priorities for several programs under the National Institute on Disability and Rehabilitation Research (NIDRR) for Fiscal Years 1991–1992. NIDRR intends to propose additional priorities for Fiscal Year 1992 at a later date.

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these final priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, National Institute on Disability and Rehabilitation Research (Telephone: (202) 732–1139). Deaf and hearing-impaired individuals may call (202) 732–5316 for TDD services.

SUPPLEMENTARY INFORMATION: Authority for the research programs of NIDRR is contained in section 204 of the Rehabilitation Act of 1973, as amended. Under these programs, awards are made to public and private nonprofit and for-profit agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations. NIDRR may make awards for up to 60 months, through grants or cooperative agreements. The awards are for planning and conducting research, demonstrations, and related activities that lead to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

NIDRR regulations authorize the Secretary to establish research priorities by reserving funds to support particular research activities (*see* 34 CFR 351.32). These priorities were proposed for public comment through publication in the **Federal Register** on July 5, 1990, at 55 FR 27786. NIDRR reviewed the comments received on the priorities and now announces final funding priorities based on the responses to the proposed priorities, available funds, and other Departmental considerations. A synopsis of the comments received and the Secretary's responses to the comments are included in the Appendix to this document. The publication of these final funding priorities does not bind the Department of Education to fund projects under any or all of these priorities, except as otherwise provided by statute. Funding of particular projects depends on the quality of the applications received and the available funds.

The following final funding priorities represent areas in which NIDRR plans to support research and related activities through grants or cooperative agreements in four programs:

- Research and Demonstration projects (R & D);
- Rehabilitation Research and Training Centers (RRTCs);
- Rehabilitation Engineering Centers (RECs); and
- Knowledge Dissemination and Utilization projects (D & U).

Research and Demonstration Projects

Research and Demonstration projects support research and/or demonstrations in single project areas on problems encountered by individuals with disabilities in their daily activities. These projects may conduct research on rehabilitation techniques and services, including analysis of medical, industrial, vocational, social, emotional, recreational, economic, and other factors affecting the rehabilitation of individuals with disabilities.

Final Priorities for Research and Demonstration Projects

Involving People With Psychiatric Disabilities as Consumer Advocates in Vocational Rehabilitation

Psychosocial rehabilitation, an emerging modality for the rehabilitation of individuals with severe psychiatric disabilities, focuses on assisting people with long-term mental illness to develop their skills at decision-making, self-care, and self-determination while emphasizing normalization, less reliance on professional service providers, and other principles and practices that involve persons with severe psychiatric disability in their own rehabilitation. There is a need to identify proven strategies that involve members of this target population as advocates, planners, administrators, and implementers of service programs and to facilitate their contribution to improving vocational rehabilitation services for all persons with psychiatric disabilities. Partnerships of researchers and consumers are needed to identify effective models and the prerequisite organizational elements, demonstrate operational examples, and document outcomes.

This priority is based, in part, on recommendations from the Rehabilitation Services Administration Interagency Work Group on Psychiatric Rehabilitation, and on reviews of work completed or in progress on consumer advocacy in the broad field of mental health. The principles of psychosocial rehabilitation as well as many models of vocational rehabilitation encourages substantial consumer involvement, and thus require an improved understanding on the part of consumers, advocates, clinicians, and other service providers of methods to most effectively involve consumers in developing and providing services. Further, the best practice study of vocational rehabilitation services to severely mentally ill persons (Policy Studies Associates, 1989) clearly identified the potential contribution of consumer-driven and operated services and recommended their use by vocational rehabilitation agencies.

An absolute priority is announced for a project to:

- Review the current state-of-the-art in involving persons who have experienced severe psychiatric disability in key roles in advocacy, planning, information and referral, peer support, training, program administration, service delivery, evaluation, and related aspects of the provision of vocational rehabilitation services;
- Demonstrate models to effectively involve individuals with severe psychiatric disabilities in the development of their own rehabilitation service plans and/or in the delivery of vocational rehabilitation services, and evaluate the impact of consumers acting as advocates on client outcomes; and
- Develop materials, based on research findings, and provide technical assistance to enhance the capacity of a national cross-section of vocational rehabilitation agencies to facilitate the involvement of consumer-advocates in implementing vocational rehabilitation programs.

National Job Coach Study

Supported employment has become an important approach to the vocational rehabilitation of individuals with severe disabilities. A key element of the supported employment approach is the use of the job coach to provide employment-related support. There are indications that rehabilitation administrators need a better understanding of the role, function and status of the job coach (also called an employment training specialist) in transitional and supported employment. In particular, the requirements,

characteristics, and functions of job coaching in programs serving individuals with different types of disabilities can be expected to diverge. While persons with mental retardation appear to be the group most commonly served in supported employment at present, there are also supported employment programs focusing on individuals with psychiatric disabilities, traumatic brain injury, sensory disabilities, and other types of disabilities.

A recent study (Rusch, 1988) found that job coaches in Illinois have varied educational backgrounds (34 percent baccalaureate degrees related to disability, 10 percent baccalaureate degrees unrelated to disability, 8 percent associate degrees, 4 percent masters degrees, 34 percent high school diplomas, and 10 percent from unknown backgrounds). The study also found that job coaches are paid relatively low salaries (mean $12,628 per year) and experience a high turnover rate (46.5 percent terminated in one year). Although the total number of supported employment training specialists is unknown, serving individuals with severe disabilities in small, integrated settings, as required by Federal regulations, has been accomplished largely though the use of these job coaches. The need for research on the employment conditions of job coaches was highlighted by the Rehabilitation Services Administration's 1988 Forum on Supported Employment in Williamsburg, and the 1989 Supported Employment Forum in Washington, DC. The President's Committee on Employment of People With Disabilities Supported Employment Forum (May 1988) recommended national action to improve job coaching.

This project will identify key facts about job coaches—pay, working conditions, experience, duties, career opportunities, and methods of coaching that can be used to develop operational guidelines for recruiting, training, and retaining job coaches and to improve job coaching services for individuals with severe disabilities.

An absolute priority is announced for a project to:

- Conduct public participation activities such as forums, workshops, hearings, and institutes involving persons with disabilities, job coaches, parents, employers, rehabilitation administrators, educators, and researchers in order to identify issues, best practices, alternative models, and outcomes for improving the use of job coaches, focusing on at least two types of disabilities commonly served in supported employment;
- Analyze conditions affecting the role, status, and management of job coaches, including such issues as recruitment and hiring, pre-service and in-service training, position descriptions, merit and productivity review criteria, use of coworkers as job coaches, benefits and incentives, career paths and advancement, turnover, coaching resources, technology applications, and mechanisms for professional communication and exchange, using data from supported employment programs and job coaches serving various disability groups, either separately or together, and presenting reliable data on job coaching for more than one disability group;
- Convene a national conference, focusing on two or more different types of disabilities, which has been planned and organized with the substantial involvement of job coaches, consumers, parents, or family members of persons with severe disabilities, administrators, and researchers, to present project recommendations and findings for consideration at local, State, and national levels; and
- Disseminate project findings widely to State agencies, community-based agencies, consumer organizations, policymakers and other appropriate audiences, using a range of dissemination strategies and accessible formats as appropriate.

National Study of Transition of Individuals With Severe Disabilities Leaving School

Individuals with severe disabilities of all types leaving school often need additional services to help them enter and maintain adult roles, including employment, independent living, or postsecondary education. Many of these individuals, however, may be unable to access these additional services in a timely manner. A recent analysis of data from the State of Maryland concluded that 11 percent of those leaving school with severe disabilities face uncertain futures due to discrepancies between their continuing service needs and the ability of adult service programs to meet their needs. [Ward, M. and Halloran, W., "Transition to Uncertainty: Status of Many School Leavers with Severe Disabilities," CDEI, 1989.]

Individuals involved in assisting youth to make the transition from school to work and adult life often allude to discrepancies between the needs of individuals leaving school and the availability of services. However, there are no definitive data regarding this alleged service gap, and a national study of this issue is needed to determine the extent to which such a gap exists.

Youth with severe disabilities leaving school often require coordinated services from education agencies, vocational rehabilitation agencies, and community-based service providers. Some States and agencies may have more effective systems than others for assigning priority to youth with severe disabilities in transition, as well as other approaches to eliminate or reduce any gaps in services. A national study of specific policies and practices for coordinating transition services would provide information regarding effective intervention.

The study will include a survey to determine the magnitude of the problem of service gaps, an analysis of existing policies and practices, and case studies of States whose current policies or practices deliver effective transition services for youths with severe disabilities. The project should consider the use of problem-solving techniques that include youth and adults with disabilities who have experienced gaps in services as well as those who have had successful transitions.

An absolute priority is announced for a project to:

- Analyze transition problems of youths with severe disabilities in several States in order to document the magnitude and characteristics of any service gaps that may exist;
- Identify States that have exemplary policies, administrative practices, and funding strategies that facilitate the transition of students with severe disabilities into employment, further education, and related adult outcomes;
- Develop a framework for model State transition policies appropriate for the range of problems facing States; and
- Conduct a variety of appropriate informational exchange activities to encourage States to develop policies that will facilitate timely access to adult services and thus improve transition outcomes for youth with severe disabilities.

Alcohol and Substance Abuse as Barriers to Job Re-Entry for Persons With Traumatic Brain Injury

There is a serious problem of substance (alcohol and drug) abuse and addition among persons who have experienced traumatic brain injury (TBI). Individuals who have experienced TBI often have residual functional difficulties in short-term memory, decision-making, social skills, communicating, problem solving, and relating to family members and friends. Consequently, many interventions which have proven effective in assisting people with substance addictions have

not helped persons with TBI. Treatment and support interventions, particularly for early problem identification and to assist family members of TBI survivors, are needed in order to help individuals with TBI avoid or overcome addictions and continue their rehabilitation programs for return to work.

Alcohol and other substance addictions of persons with TBI were identified as major problems at the November 1987 NIDRR National Invitational Conference on Traumatic Brain Injury and at Beach Conference on Community-Based Employment for Persons with TBI. A recent article in Alcohol Health & Research World (1989) titled "Alcohol Abuse and Traumatic Brain Injury" identified the need for improved case management, research, and education on this problem. Progress reports from NIDRR's Research and Development projects on supported employment for persons with TBI have identified addictive behavior as a major barrier to their return to work. The National Head Injury Foundation has recommended national action on this topic, including the effects on family members of substance abuse by persons who have survived TBI.

An absolute priority is announced for a project to:

- Develop, field test, and evaluate appropriate treatment and support interventions to prevent or ameliorate substance abuse for persons who have experienced traumatic brain injury and their families;
- Prepare program materials for use by rehabilitation counselors, job coaches, teachers, psychologists, employers, family members, and consumers in their efforts to reduce substance abuse among individuals with TBI;
- Develop model referral procedures, guidelines for the use of general alcohol and substance abuse treatment resources by the TBI population, strategies for avoiding second injuries consequent to substance abuse, and measures of program outcomes and effectiveness; and
- Disseminate project findings to rehabilitation and addiction programs, to medical programs in TBI, and to professional and consumer organizations dealing with traumatic brain injury.

Case Management in the Vocational Rehabilitation of Persons With Psychiatric Disability

"Case management" has frequently been identified as essential for providing outcome-oriented, individualized, continuous assistance to persons with psychiatric disability whose complex needs require the services of a gamut of agencies over long periods of time (Robinson and Bergman, 1989; Gowdy and Rapp, 1989; Rapp and Wintersteen, 1989). "Best practices" in vocational rehabilitation for persons with psychiatric disability incorporate case management features such as specialized caseloads, post-employment services, interagency coordination of vocational rehabilitation with other service systems, and extension of the role of the job coach to accommodate the special needs of persons with severe psychiatric disability (Policy Studies Associates, 1989). Despite the widespread agreement on the value of case management approaches, administrators have few proven case management models and little guidance on their implementation.

Questions frequently asked by managers of mental health rehabilitation programs include the following: How do case management approaches in mental health and vocational rehabilitation compare? What are the mental health case management functions of a job coach? What are the vocational support functions of a mental health case manager? Can peer, family, and co-worker support activities serve case management functions? How do case management needs change after employment? When and how should case management start, stop, or transfer lead responsibility between mental health and vocational rehabilitation agencies? How does the case management model impact on consumer empowerment, or a mutuality between consumer and the service provider in an effort to reach a shared objective?

There is a need for research to examine case management practices in the vocational rehabilitation of persons with psychiatric disability in order to identify feasible, effective models and specify crucial cost, staffing, skills, and administrative components.

An absolute priority is announced for a project to:

- Analyze case management practices and models for vocational rehabilitation of persons with psychiatric disability, including analyses of costs, effectiveness, staffing, interagency coordination, and the roles of peers, co-workers, and family members;
- Compare and contrast case management functions and responsibilities in mental health and vocational rehabilitation (MH/VR) service systems from the time of initial vocational assistance to persons with psychiatric disability through periods of their sustained employment to compile longitudinal data that will assist MH/VR agencies to adapt or adopt appropriate program features that foster greater employment stability among their clients;
- Assess the relationship between the case management approach and endeavors of consumers to manage their own rehabilitation and examine the role of subtle factors such as terminology and approach that effect the achievement of consumer aspirations in program direction; and
- Prepare research monographs, presentations, training materials, and journal articles for dissemination of project findings to MH/VR agencies and other relevant audiences.

Health Care Policy and Rehabilitation

The health care system in the United States is undergoing substantial changes, not the least of which are in the mechanisms for delivering and financing medical care. Many of the new developments in the delivery of health care services are based on models for acute care or communicable diseases services and fail to take into account the long-term medical and rehabilitation needs of persons with the most severe disabilities. At present, disabled populations are either ignored or forced into modes of care that may be inappropriate or unresponsive to their needs.

The purpose of this priority is to generate new knowledge to resolve important health care policy issues that have an impact on the delivery of medical rehabilitation/physical restoration services. Issues that require study in this area include: the costs and efficacy of rehabilitation services and specific rehabilitation modalities; the impact of various innovative payment methods on rehabilitation hospitals and regional service delivery systems, *e.g.*, Model Spinal Cord Injury projects; and the development of new and innovative methods of delivering comprehensive medical rehabilitation services that include identification of financial and administrative characteristics.

An absolute priority is announced for a project to:

- Identify innovative models of resource consumption, using established and recognized functional outcome measures, to serve as a basis for prospective and other payment systems in rehabilitation medicine services;
- Demonstrate and evaluate the feasibility of using functionally-based models for payment systems, with emphasis on appropriate classification schemes that include such factors as severity, progress during rehabilitation,

and outcome compared to admission status;

• Analyze variations in patterns of resource utilization during acute rehabilitation and identify the variables that influence these changes;

• Determine the relationship between changes in functional status and patterns of resource utilization during acute inpatient rehabilitation; and

• Identify and evaluate factors in various payment models that contribute to the quality of care during acute in-patient medical rehabilitation and the post-rehabilitation health status of individuals with disabilities.

Rehabilitation Research and Training Centers

Authority for the Rehabilitation Research and Training Centers program of NIDRR is contained in section 204(b)(1) of the Rehabilitation Act of 1973, as amended. Under the RRTC program, awards are made to institutions of higher education, or to public and private organizations, including Indian tribes and tribal organizations, in collaboration with institutions of higher education.

RRTCs conduct programmatic, multidisciplinary, and synergistic research, training, and information dissemination in designated areas of high priority. NIDRR's regulations authorize the Secretary to establish research priorities by reserving funds to support particular research activities (*see* 34 CFR 352.32). A program of RRTCs has been established to conduct coordinated and advanced programs of rehabilitation research and to provide training to rehabilitation personnel engaged in research or the provision of services. Each Center conducts a synergistic program of research, evaluation, and training activities focused on a particular rehabilitation problem area. Each Center is encouraged to develop practical applications for all of its research findings. Centers generally disseminate and encourage the utilization of new rehabilitation knowledge through such means as writing and publishing undergraduate and graduate texts and curricula and publishing findings in professional journals. All materials that the Centers develop for dissemination training must be accessible to individuals with a range of disabling conditions. RRTCs also conduct programs of in-service training for rehabilitation practitioners, education at the pre-doctoral and post-doctoral levels, and continuing education. Each RRTC must conduct an interdisciplinary program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research. Centers must also conduct state-of-the-art studies in relevant aspects of their priority areas. Each RRTC must also provide training to individuals with disabilities and their families in managing and coping with disabilities.

NIDRR will conduct, not later than three years after the establishment of any RRTC, one or more reviews of the activities and achievements of the Center. Continued funding depends at all times on satisfactory performance and accomplishment, in accordance with the provisions of 34 CFR 75.253(a).

Final Priorities for Rehabilitation Research and Training Centers

Rehabilitation of Blind and Visually-Impaired Individuals

The National Health Interview Survey (LaPlante, 1988) indicates that there are approximately 600,000 men and women between the ages of 18 and 69 whose work activities are limited due to visual disabilities, including blindness, glaucoma, cataracts, and other visual impairments. Of this group, about 405,000 individuals are unemployed. A significant number of the remaining 195,000 individuals are underemployed.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches designed to improve services for this population. A Center in this area should develop models for the effective delivery of rehabilitation services in the areas of career preparation, placement, and career advancement. The Center will assist rehabilitation service delivery systems to adapt to the changing needs of the blind and visually-impaired individuals for career preparation and enhancement, either by restructuring service programs, retraining staff, or implementing new service techniques.

An immediate objective for the Center is to assist service delivery agencies to make better use of the information that is available, including research data, models of career preparation, placement, retraining, and advancement, and standards and guidelines that have been developed to guide rehabilitation efforts for this population. Over the longer term, it is important to develop better rehabilitation service delivery models that are based on field and laboratory research, and tested by blind and visually-impaired persons in regular use. One prerequisite to improving rehabilitation services in a comprehensive way is to assist those who design, manage, and provide training, placement, and employment services to become aware of the potential for creating more accessible environments for this population through the use of technology, adaptive viewing devices, and related accommodations.

A critical element of any Center to be funded under this priority will be the involvement of individuals who are blind and those with low vision and their advocates in the planning, conduct, and review of Center activities. All instruments, program descriptions, training materials and courses, data bases, and technical assistance materials produced by the Center must be developed in formats that are accessible to individuals with various types of visual impairments. The Center will develop a national data base in this field of activity and serve as a central repository of information on the rehabilitation of persons with blindness and visual impairments.

An absolute priority is announced for an RRTC to:

• Identify and analyze existing career preparation and placement service programs and systems for persons who are blind or visually impaired, and, when needed, develop new and innovative services and service delivery systems for enhancing the rehabilitation of this population;

• Develop research-based models for and conduct training to enhance the capabilities of blind and visually-impaired persons, including those from racial and ethnic minorities and women, to develop their rehabilitation plans, select career goals, and match personal abilities and expectations to changing vocational opportunities in the labor market;

• Develop strategies and techniques to enhance coordination and cooperation between secondary and postsecondary educational institutions and vocational rehabilitation agencies to assist both visually-impaired persons and their employers in the process of transition from school to work;

• Analyze methods to increase job retention among this population, including strategies such as job-site modification, job restructuring, cooperative efforts with organized labor, and retraining;

• Develop and test technical assistance and training models for rehabilitation agencies, business and employer associations, and consumer groups to promote the employment, retention, and advancement of blind and visually-impaired workers;

• Analyze the cost-effectiveness and quality of life factors in different rehabilitation delivery systems, including Comprehensive Rehabilitation Centers, for individuals who are blind or visually impaired, including individuals in different age groups, from racial and ethnic minorities, women, and both rural and urban residents;

• Develop and disseminate model curricula for training vendors in the Business Enterprise Program (BEP), model program operation manuals for BEP supervisors, and model BEP marketing programs for people who are blind, for building supervisors, and for rehabilitation service providers, with an emphasis on expanded representation of women and minorities;

• Identify the appropriate use of, and instruction in, Braille, optical devices and technologies that could contribute to the higher literacy level necessary for various types of employment.

• Develop and maintain a national research data base on the career preparation, placement, and advancement of blind and visually-impaired persons, and serve as a Center for current information concerning this population and the professional personnel, programs, and related resources available to assist in rehabilitation efforts on their behalf;

• Provide advanced training at the predoctoral and postdoctoral levels, and for professional practitioners in the rehabilitation of blind and visually-impaired persons, with an emphasis on recruiting blind and visually-impaired persons for that training;

• Provide advanced training in research in fields pertinent to the rehabilitation of blind and visually-impaired individuals, with emphasis on recruiting blind and visually-impaired individuals and individuals from other underrepresented populations for that training;

• Conduct at least one national study of the state-of-the-art to identify current knowledge and recommend future research; and

• Organize and conduct research and training conferences and short-term institutes in cooperation with professional and consumer organizations in order to disseminate Center findings and products on an annual basis.

Rehabilitation of Deaf and Hard-of-Hearing Individuals

Individuals with hearing impairment comprise the single largest chronic physical disability group in the United States, numbering an estimated 21 million Americans (National Center for Health Statistics, "Data Reports," No. 160, 1987). The unpublished data from the combined 1979–1980 Health Interview Surveys indicate that over 26 percent of those whose only disability is hearing impairment report themselves to have activity limitations, while those who also have other chronic conditions or impairments are twice as likely to report functional limitations. (Mathematical Policy Research, Digest of Data on Persons With Disabilities, 1984.) This segment of the population presents major challenges to public rehabilitation efforts on their behalf.

An RRTC is announced to address the rehabilitation needs of this population, particularly those individuals who are profoundly deaf or have significant hearing impairments. A pro-program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches designed to improve services for this population. In particular, an RRTC is needed to develop models for effective delivery of rehabilitation services in the areas of career preparation, placement, and career advancement. The Center will assist rehabilitation service delivery systems to adapt to the changing career preparation and enhancement needs of deaf and hard-of-hearing persons, whether by restructuring service programs, retraining staff, or implementing new service techniques.

An immediate objective is to make better use of the information that is available, including research data, models of career preparation, placement, retraining, and advancement, and standards and guidelines that have been developed to improve rehabilitation efforts for this population. Over the longer term, it is important to develop better rehabilitation service delivery models that are based on field and laboratory research, and tested by deaf and hard-of-hearing persons in regular use, including those from racial and ethnic minorities. One prerequisite to improving rehabilitation services in a comprehensive way is to assist those who design, manage, and provide training, placement, and employment services to become aware of the potential for creating more accessible communication environments for this population through the use of manual, oral, or cued speech interpreters, adaptive listening devices, and related accommodations.

A critical element of any Center to be funded under this priority will be the involvement of individuals who are deaf and those who are hard-of-hearing in the planning, conduct, and review of Center activities. All instruments, descriptions, training materials and courses, data bases, and technical assistance developed by the Center must be provided in formats that are accessible to individuals with various types of hearing impairments. The Center will develop a national data base in this field of activity and serve as a central repository of information on the rehabilitation of persons with severe-to-profound hearing impairments. The Center also is expected to cooperate with the RRTC on Low-Functioning Deaf Individuals, funded in 1990, to share information and findings, and to consider coordinated research studies and training activities. The Center is also expected to cooperate with community agencies and consumer organizations to improve public awareness and the dissemination of information.

An absolute priority is announced for an RRTC to:

• Identify and analyze existing career preparation and placement service programs and systems for persons who are deaf or hard-of-hearing, and, when needed, develop new and innovative services approaches and systems to enhance the rehabilitation of this population;

• Conduct research and training to enhance the capabilities of deaf and hard-of-hearing persons, including those from racial and ethnic minorities and women, to develop rehabilitation plans, select career goals, and match personal abilities and expectations to changing vocational opportunities in the labor market;

• Develop strategies and techniques to enhance coordination and cooperation between secondary and postsecondary educational institutions and vocational rehabilitation agencies to improve the transition from school to work for deaf and hard-of-hearing persons;

• Develop an employment profile of the deaf and hard-of-hearing populations and identify the skills necessary for job entry, advancement, retention, and satisfaction for this population in the year 2000;

• Develop models of technical assistance and training for rehabilitation agencies, business and employer associations, and consumer groups in methods to stimulate the hiring, retention, and advancement of deaf and hard-of-hearing workers;

• Investigate the special problems and needs that professionals, service providers, and families encounter in their efforts to facilitate the independence, and personal, social, cultural, and career adjustment of deaf and hard-of-hearing persons in both urban and rural settings, and develop

effective models for the provision of support services;

• Develop and maintain a national research data base on the career preparation, placement, and advancement of deaf and hard-of-hearing persons, and serve as a Center of current information concerning this population and the professional personnel, programs, and related resources available to assist in rehabilitation efforts on their behalf;

• Provide advanced training at the predoctoral and postdoctoral levels, and for professional practitioners in the rehabilitation of deaf and hard-of-hearing persons, with an emphasis on recruiting persons who are hearing-impaired—including individuals who are deaf and those who are hard-of-hearing—for this training;

• Provide advanced training in research in fields pertinent to the rehabilitation of deaf and hard-of-hearing persons, with emphasis on recruiting individuals who are hearing-impaired and individuals from other underrepresented populations for that training;

• Conduct at least one national study of the state of the art to identify current knowledge and recommend future research; and

• Organize and conduct research and training conferences and short-term institutes in cooperation with professional and consumer organizations and community agencies in order to disseminate Center findings and products on an annual basis.

Rehabilitation Engineering Centers

Authority for the Rehabilitation Engineering Center (REC) program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended. Under this program, awards are made to public and private organizations, including institutions of higher education, Indian tribes, and tribal organizations to conduct coordinated programs of advanced research of an engineering or technological nature. RECs also work to develop systems for the exchange of technical and engineering information and to improve the distribution of assistive devices and equipment to individuals with disabilities. Each REC must be located in a clinical setting and is encouraged to collaborate with institutions of higher education in the conduct of a program of research, scientific evaluation, and training that advances the state-of-the-art in technology or its application. Each Center is expected to contribute substantially to the solution of rehabilitation problems through developing practical applications for their research and through scientific evaluation to validate the findings of their research and that of other Centers. RECs generally conduct both academic and in-service training to disseminate and encourage the use of new rehabilitation engineering knowledge, and to build capacity for engineering research in the rehabilitation field. Each REC must ensure that all training materials developed by the Center are presented in several formats that will be accessible to individuals with various types of sensory and mobility impairments.

NIDRR will conduct, not later than three years after the establishment of any REC, one or more reviews of the activities and achievements of the Center. Continued funding depends at all times on satisfactory performance and accomplishment in accordance with the provisions of 34 CFR 75.253(a).

Final Priority for Rehabilitation Engineering Center

Technology for Older Persons With Disabilities

The prevalence of medical, neurological and orthopedic impairments increases with the age of the population. Common conditions in the older population that frequently result in disability include arthritis, stroke, pulmonary disease, hip fractures, Alzheimer's disease, and deficits in vision and hearing. (Breuer, 1982; Haber, 1986). It is estimated that half of all Americans over seventy years of age have one or more disabilities. (Williams 1986). The frequency of multiple disabilities is also much higher in the older population (Breuer, 1982; Williams, 1986).

Technology has been used in rehabilitation to help reduce the adverse effects of impairment and disability. Technology, however, has not been widely used to solve problems in geriatric rehabilitation.

A new REC to be funded in this area will emphasize technological solutions to the special needs of older persons that are a consequence of the aging process as it produces functional limitations similar to those experienced by persons of all ages with disabilities. At the same time, the Center must be concerned with applications of technology to mitigate the effects of the aging process on persons who have disabilities.

The older person often has problems unique to an order population that must be considered in the application of technological solutions. First, many devices or techniques aimed at ameliorating specific disabilities are designed to augment or take advantage of compensatory abilities. However, multiple and gradual changes related to aging may leave older persons without one or more areas of strength with which to compensate for other functional losses. For example, an older person requiring a wheelchair, because of gradual loss of muscle mass, may not have, or may not be able to develop, the requisite arm strength to use the grab bars.

Second, many older persons who experience problems with daily living in their houses or apartments do not consider themselves to be disabled. Because they don't view their problems as disabilities, they neither perceive nor accept the need for adaptive technologies, and are less likely to seek technology-related assistance.

Finally, the development of technological applications to functional limitations of older persons is often focused on the disability as a characteristic of the individual rather than an artifact of the person-environment interaction.

Efforts to develop and disseminate technological aids to older persons with functional limitations must be conducted in the context of using different dissemination media and service systems to reach older persons, and with a sensitivity to the need for accurate prescriptions, appropriate training in the use of the technology that is prescribed, and follow-up to assure that desired outcomes are achieved.

One study of 500 older persons who owned technological aids (Page, Galer, Fitzgerald, and Feeney, 1980) found that about 50 percent of them did not use their aids because the devices had been inaccurately prescribed, did not work, were unsafe or broken, or because the individual regarded the disability as a minor inconvenience that he/she would rather accept than try to overcome.

Other studies have emphasized the need for more sensitive and more selective criteria for assessing the need for assistive technology; a need for assessments for aids to take place in the usual living environment or in a facsimile situation; and a need to understand that the selection of the appropriate aid is critical to the consumer's expectations, that adequate training in the use of an aid is vital, and that followup visits are necessary to ensure that the aids are used and function well in the daily milieu. NIDRR has also identified a need for better-designed assistive technology, more information about assistive technology, and improved methods for the

maintenance of assistive devices for older persons.

According to Childress (1986), the most effective deployment of technology is to prevent the need for assistive devices in the first place. He states that using simple technical aids to prevent serious injuries and the resulting disabilities can be a major factor in maintaining functional independence.

The appropriate infrastructure for delivery of assistive technology to this population has not yet been determined, and the delivery system is one of the most important barriers to optimal use of assistive technology by older persons with disabilities. Users of all ages and experts have expressed difficulties in acquiring new technologies. Evaluation research has identified the communication gap between reimbursement decision-makers unfamiliar with innovative rehabilitation technologies and product designers and developers unfamiliar with the process of how users actually acquire these technologies (Engelhardt and Leifer, 1983).

Research, development, and dissemination of information by the Center must address the needs of older individuals who are typically underserved, including those from ethnic, racial, and linguistic minorities, rural areas, or congregate care settings. Older persons, including older persons with disabilities, must be involved in the planning, conduct, and review of Center activities. Any Center to be funded under this priority must coordinate and share information with NIDRR-funded RRTCs on Rehabilitation and Aging, and with programs funded under the Technology-Related Assistant for Individuals with Disabilities Act of 1988.

An absolute priority is announced for a Center to:

• Examine the relationship between the older individual and the environment to determine strategies to adapt the environment to improve the quality of life for older persons with disabilities;

• Develop and evaluate assistive technologies that are less sophisticated, more easily repairable, easier to use, less expensive, and more appropriate for and more acceptable to older persons;

• Explore various strategies to enhance the use of available assistive devices by using the knowledge, personnel, devices, and information sources available through the rehabilitation field;

• Explore various strategies for strengthening public-private sector partnerships in marketing to, and in the purchase and use of assistive devices by, older individuals with disabilities;

• Develop and disseminate new knowledge about the prevention of disabilities through the appropriate use of assistive devices;

• Develop and deliver training and technical assistance to service providers in both rehabilitation and general services to older persons, and to consumers, on sources and use of assistive devices and other technological applications to problems of functional loss caused or exacerbated by aging; and other institutions, advanced training in research in rehabilitation technology to meet the needs of older persons, with special emphasis on recruiting individuals from underrepresented populations such as individuals with disabilities, minorities, and women, for that training.

Knowledge Dissemination and Utilization Program (D&U)

Knowledge Dissemination and Utilization (D&U) projects ensure that rehabilitation knowledge generated from projects and centers funded by NIDRR and others is utilized fully to improve the lives of individuals with disabilities. The authority for this program is contained in section 202 and 204 (a) and (b)(5) of the Rehabilitation Act of 1973, as amended.

Final Priority for Knowledge Dissemination and Utilization

Regional Information Exchange

As part of its effort to disseminate new knowledge on improved rehabilitation practices, NIDRR seeks to promote the widespread use of validated exemplary practices in rehabilitation in order to improve the service delivery system for individuals with disabilities. Many of these exemplary programs were developed at the "grassroots" in communities; others emerged as a result of research sponsored by NIDRR or other agencies. NIDRR proposes to address this objective by establishing one or more Regional Information Exchange.

A Regional Information Exchange (RIE) is intended to facilitate the adoption of exemplary program models that were developed within the locality or region of the adopting agency.

The RIEs must identify and validate exemplary programs within the established priority areas, "market" the model programs to potential adoption agencies, and provide technical assistance in the adoption or adaptation of the model.

Priority areas for RIE diffusion efforts during the periods of this priority include: Emergent issues in supported employment programs, such as the involvement of co-workers, obtaining long-term funding support for individuals, and appropriate family involvement; interagency collaboration and coordination in programs for transition from school to work, including model programs that are exemplary in their use of State school exiting data for program planning; parent-professional collaboration in the integration of individuals with disabilities in education, community living, and employment; strategies for assisted housing for individuals with long-term mental illness; application of rehabilitation principles in generic services to elderly persons with disabilities in order to promote and maintain independence; and model programs for the delivery of rehabilitation engineering services in vocational rehabilitation agencies.

The RIE programs are restricted to the diffusion of carefully validated model programs in two or more of the designated priority areas, and must provide necessary technical assistance to facilitate the successful adoption or adaptation of the exemplary programs. Each RIE will work within its designated region, as defined in the grant application and cooperative agreement, and must demonstrate the appropriateness of the selected region for diffusion of exemplary programs in the specified priority areas.

An absolute priority is announced for a project to:

• Develop a process for identifying exemplary programs, including criteria, a methodology for data collection, and evaluation instruments that include measurements related to the identified criteria;

• Solicit nominations of exemplary progrmas in the priority area(s) from program operators, consumer organizations, and other relevant parties in the region, giving consideration to the inclusion of demonstration projects funded by NIDRR, the Rehabilitation Services Administration, and other Federal agencies;

• Develop and implement a procedure to validate exemplary programs in the region in the specified priority areas, involving individuals with disabilities and technical experts in the validation process, and document the methodology and findings of the validation process;

• Develop and implement strategies to make the wide audience of rehabilitation service providers and special educators aware of the exemplary programs and stimulate their interest in adoption or adapting similar models, with the assistance of the RIE;

• Develop and maintain a cadre of expert consultants in the RIE's priority areas and in the general area of knowledge transfer who can facilitate the adoption or adaptation of a exemplary programs;

• Facilitate the exchange of technical assistance between the exemplary program and the requesting adopter program through onsite demonstrations, training materials, and direct consultation; and

• Maintain appropriate data on the activities of the RIE to support an evaluation of its effectiveness.

Authority: 29 U.S.C. 760–762.

Dated: November 28, 1990.

(Catalog of Federal Domestic Assistance Nos. 84.133A, 84.133B, 84.133D, and 84.133E, National Institute on Disability and Rehabilitation Research)

Lauro F. Cavazos,

Secretary of Education.

Appendix

The Secretary received 56 letters commenting on various aspects of the proposed priorities. This Appendix contains a synopsis of those comments as well as the Secretary's responses to them. General comments are discussed first, and the remaining comments are discussed in the order of the priorities to which they pertain.

General

Comment: Several commenters urged that NIDRR focus additional priorities on research and development in technology and assistive devices. A few mentioned specific areas of technology that should become priorities. Many of these commenters expressed concern that the absence of R&D priorities in the technology area signaled a long-term diminution of NIDRR support to these areas.

Discussion: There has been no lessening of NIDRR's interest in or commitment to research in assistive technology. This notice includes a priority for a new Rehabilitation Engineering Center for assistive technology for elderly persons with disabilities. In 1990, NIDRR funded two new RECs, as well as 30 Small Business Innovative Research projects in technology, and a number of new field-initiated research and innovation grants in that field. Additionally, in 1990 NIDRR expended nearly $2 million on Projects of National Significance, including research and development and demonstration projects, under the Technology-Related Assistance for Individuals with Disabilities program. This latter program will not supplant the research funds directed to technology research by NIDRR; rather the two programs will be expected to complement each other and the priorities for the engineering research and technology assistance programs must be coordinated. Priorities are the products of a complex selection process. The priorities included in this notice, for example, emerged either from mandated interagency task forces, state-of-the-art conferences, or evaluation studies of NIDRR programs. The fact that technology priorities, other than the one REC, did not emerge from this process does not mean that NIDRR will not continue to fund a substantial body of research and development in this field through other program mechanisms. NIDRR is undertaking a long-range planning process, and will refer the suggestions for additional priorities for further consideration in the planning process.

Changes: None.

Comment: Several commenters suggested additional priorities in specific problem areas, including technology for vocational evaluations, technology for respirator-dependent individuals, rehabilitation of individuals with autoimmune deficiency disease, community integration for individuals with long-term mental illness, prosthetics and orthotics research, specific learning disabilities, and improved accessibility for health care facilities.

Discussion: The Secretary appreciates these thoughtful and worthwhile suggestions. NIDRR will ensure that these suggestions, and the supporting documentation provided by the commenters, are considered in the future planning process. However, the Secretary also reminds commenters that projects in all of these areas are eligible for support under the field-initiated research and innovation grant programs.

Changes: None.

Involving People With Psychiatric Disabilities as Consumer Advocates in Vocational Rehabilitation

Comment: A number of commenters suggested that certain additional aspects of self-advocacy and mental illness be added to the scope of the priority, such as evaluation of the impact of self-awareness training, expansion to include other areas of psychosocial rehabilitation, studies of self-help groups, and the development of "decision-aiding systems" to support cognitive processes of individuals with mental illness. One commenter urged that the priority be expanded to include an evaluation of the impact of consumer advocates in long-term support programs.

Discussion: The Secretary agrees that the evaluation of the impact of consumer involvement is a key element in this priority and had intended for applicants to include such an evaluation in their demonstration projects. The Secretary agrees to include such an evaluation to further emphasize the importance of acquiring knowledge about the impact of various consumer roles in vocational rehabilitation for individuals with long-term mental illness. However, the Secretary rejects the suggestions to add studies of specific methods of consumer participation, such as consumer-owned business, self-help groups, or cognitive support systems since to do so would prescribe the details of the research approaches. Applicants are free to propose studying any of these modes of consumer involvement as long as they meet the objectives of the priority.

Changes: An additional required activity has been included specifying that the recipient of an award must also evaluate the impact on outcomes of consumers as advocates in vocational rehabilitation for this population.

Comment: One commenter argued the focus should be on all types of vocational rehabilitation of individuals with psychiatric disabilities, not just vocational rehabilitation using the psychosocial model. A second commenter urged that the priority not be limited to vocational rehabilitation, but be expanded to other psychiatric treatment programs.

Discussion: The Secretary agrees that the priority should include studies of consumer advocacy in all types of vocational rehabilitation programs, not only those that employ the psychosocial model. However, the Secretary rejects the suggestion of extending the scope of the priority beyond vocational rehabilitation, since the priority was generated by the Rehabilitation Services Administration Interagency Work Group on Psychiatric Rehabilitation as a response to identified needs in vocational rehabilitation.

Changes: References to psychosocial or psychosocial vocational rehabilitation have been deleted from the project requirements, and the priority is clearly applicable to all vocational rehabilitation for individuals with severe psychiatric disabilities.

National Job Coach Study

Comment: Several commenters stated that job coaching has very different elements for different disability groups. Several commenters were concerned that the study would inevitably focus only on job coaching for individuals with mental retardation—the largest population group in supported employment—and, therefore, the findings may not be generalized to job coaching in programs for individuals with other types of disabilities, such as traumatic brain injury, severe psychiatric disabilities, or physical disabilities. A second commenter recommended that the project include a number of information dissemination strategies in addition to the required national conference in order to reach other audiences.

Discussion: The Secretary agrees that job coaching is likely to vary among disability groups, and, therefore, the study needs to obtain information about job coaching for more than one disability group. The Secretary also agrees that the project should include additional means of disseminating its findings.

Changes: A statement has been added to the preamble to the priority to indicate that variations in job coaching according to disability group can be expected, and an absolute requirement to address job coaching with at least two disability groups has been added. The priority has also been modified to require that several effective methods of dissemination of findings to appropriate target audiences be included in any project resulting from this priority.

Comment: Several commenters suggested that certain required elements be added to the priority. For example, one commenter suggested that the research should focus on "intelligent tutoring systems" for job coaches. One commenter recommended a study of the relationship between factors related to job coaching and client outcomes; a comparison of job coaches in rehabilitation to various counterparts in private industry; and an

analysis of the barriers to implementation of effective job coaching.

Discussion: Most of the suggested additions presuppose a more systematic base of information about job coaching supported employment than now exists. The purpose of the study is to begin to quantify and define some of the experiential knowledge derived from the first few years of job coaching in supported employment. This would be a prerequisite to either a study of the impact of job coaching on client outcomes or to a policy analysis such as the suggested study of barriers to implementation. The Secretary is, therefore, not adding these suggested elements to this priority.

Changes: None.

National Study of Transition of Individuals With Severe Disabilities Leaving School

Comment: Several commenters suggested additional activities be included in this priority. One commenter urged that supported learning in postsecondary education settings be included for students with psychiatric disabilities. A second organization recommended several additions to the priority that would evaluate the effectiveness of States, local governments, and school districts in developing and implementing policy and also fund incentive programs to encourage implementation of effective transition programs.

Discussion: The Secretary agrees that transition to adult roles may include transition to postsecondary education, which may be through supported education, for any disability group. The priority is directed to the particular purpose of improving State transition practices; an applicant may propose to approach the objectives of the priority through evaluations of State policysetting processes if the applicant believes this method will meet the requirements of the priority effectively. NIDRR's mission does not extend to implementation of improved education programs (*e.g.*, "incentive programs"); however, NIDRR strives to disseminate findings of research and to encourage the utilization of those findings by service programs.

Changes: The Secretary has included a reference to postsecondary education, which could include supported education, as one of the objectives of the transition programs to be studied.

Comment: Two commenters mentioned the need to define "youth with severe disabilities" or possibly to expand the coverage of the priority to include all youth with disabilities.

Discussion: NIDRR adheres to the provisions of the Rehabilitation Act of 1973, as amended, that specify that NIDRR research shall focus on those with disabilities, "especially those with the most severe disabilities." Severe disabilities are defined in the Act at section 7(15)(A) (29 U.S.C. and in the regulations implementing the Act at 34 CFR 350.4(b).

Changes: None.

Comment: A final comment concerned the possibility of this priority duplicating studies that might be required under the Education of the Handicapped Act (EHA).

Discussion: The priority was developed in conjunction with the Office of Special Education (OSEP), which administers the Education of the Handicapped Act, and any ensuing project will be supported jointly by OSEP and NIDRR. The study was planned to meet some of the requirements of the EHA and there is close coordination between NIDRR and OSEP to avoid unproductive duplication.

Changes: None.

Alcohol and Substance Abuse as Barriers to Job Re-Entry for Persons With Traumatic Brain Injury

Comment: One commenter requested that identification of best practices in supported employment for individuals with TBI be included in that priority. The commenter further requested that applicants be required to demonstrate a relationship with the Head Injury Centers to be funded by the Rehabilitation Services Administration in fiscal year 1990.

Discussion: NIDRR has announced priorities and funded several projects over the past few years to address issues of supported employment for individuals with TBI. While an applicant may use this approach to the objectives of the priority, this is not a requirement. The Secretary prefers not to restrict applicants to those that have a prior relationship with a particular set of Centers. While it is clear that the applicant will need a clinical base, there are many other centers for clinical treatment and rehabilitation of individuals with traumatic brain injury, including four RRTCs and five model projects funded by NIDRR, that could provide a clinical population for the study. Any project under this priority is expected to disseminate its findings to major service providers, including Head Injury Centers.

Changes: None.

Comment: One commenter stated that the priority should not focus on substance abuse, as it is only one of many problems of individuals with TBI.

Discussion: NIDRR has funded four RRTCs, five model demonstration projects, four research and demonstration projects, and numerous field-initiated and innovation grant projects in the area of TBI. None of these projects has a focus on substance abuse and TBI, although the Secretary received several letters suggesting that over half of the TBI population has substance abuse problems. This project is intended to document the extent of that one particular problem of the TBI population and the Secretary does not want to dilute that focus.

Changes: None.

Case Management in the Vocational Rehabilitation of Persons With Psychiatric Disability

Comment: Two commenters suggested that the priority should include a study of the relationship between case management and consumer empowerment. Several commenters suggested that the term "case management" is itself demeaning, as it implies impersonal manipulation of consumers by managers.

Discussion: The Secretary agrees that consumer ability to manage their own rehabilitation is extremely important for individuals with psychiatric disabilities. It is unclear whether case management enhances or diminishes the self-management abilities of the individuals. The priority continues to use the term "case management" because the term is in widespread use in both vocational rehabilitation and psychiatric service agencies. However, part of the purpose of the study will be to devise relationships, definitions, and terminology that are affirming to consumers and to service providers.

Changes: The Secretary has modified the priority to include a study of the impact of case management on the goal of enhanced consumer self-management.

Comment: One commenter stated that this priority should place particular emphasis on case management for individuals who are dually-diagnosed, presumably referring to individuals who have both mental retardation and long-term mental illness. This suggestion was justified by the fact that those who are "dually-diagnosed" often are not considered the appropriate target population by either mental health or mental retardation service agencies.

Discussion: This priority is intended to meet particular needs for service improvements in the vocational rehabilitation system, and is not directed at either the mental health or mental retardation service systems as such. This priority is directed at improving services to individuals with psychiatric disabilities who are clients of the vocational rehabilitation system, regardless of their other disabilities. NIDRR is supporting research and related activities on case management for the broader populations of individuals with psychiatric disabilities and individuals with severe behavior disorders in several of its RRTCs, and the Secretary has decided to focus this priority on improving vocational rehabilitation services for individuals who have psychiatric disabilities and are clients of rehabilitation agencies, regardless of whether or not they have a "dual diagnosis."

Changes: None.

Health Care Policy and Rehabilitation

Comment: Two commenters suggested that the priority be expanded to include some form of study of the impact of payment models on client outcomes. One commenter suggested that the study should include an analysis of the costs and benefits of rehabilitation to society. A third suggestion was that the priority require statistical modeling rather than a demonstration of functionally-based models for payment systems, as it could be too cumbersome to implement a full demonstration.

Discussion: The purpose of this priority is to achieve a specific body of applied knowledge about the impact of various health care policies and rehabilitation services. It is not intended to be a comprehensive assessment of the value of rehabilitation to society; such an assessment would dwarf the scope and intent of the original priority. The Secretary does not intend to specify statistical modeling as a substitute for a demonstration. Applicants are not required to

mount a new demonstration, but may evaluate existing demonstrations. It will be the responsibility of the applicant to submit the most effective approach to the overall objectives of the priority. The Secretary agrees that it is consistent with the scope of the priority to include an assessment of the impact of various payment systems on client outcomes.

Changes: A statement requiring an identification and evaluation of the factors in various payment models that contribute to the quality of care during acute in-patient medical rehabilitation and to the post-rehabilitation health status of individuals with disabilities has been added to the priority.

Rehabilitation of Blind and Visually-Impaired Individuals

Comment: Two commenters urged that technology to enhance employment be added as a specific requirement for this RRTC. Other commenters suggested that the priority outlines an overly-ambitious research agenda.

Discussion: The Secretary believes that this priority does indeed outline a very extensive program of research as needed to solve problems in the rehabilitation of blind individuals. This work is to be conducted over a five-year period. The Secretary believes it would not be practical to require the resulting Center to develop or otherwise address new technology. However, any applicant may choose to conduct studies of the use of technology in their approach to the objectives of the priority.

Changes: None.

Rehabilitation of Deaf and Hearing-Impaired Individuals

Comment: One commenter urged that the title and wording of the priority be changed to refer to "deaf and hard-of-hearing" rather than "deaf or hearing-impaired" individuals on the grounds that the former term is more inclusive of individuals who have disabilities resulting from hearing deficits. The commenter suggested that this change in terminology would be further implemented by changing one of the required activities by noting that interpreters can use manual, oral, or cued-speech modalities. The commenter further requested that the resultant Center be expected to cooperate with community agencies and consumer organizations as well as other RRTCs.

Discussion: The Secretary agrees that the more inclusive terminology should be employed to ensure that the Center addresses the rehabilitation needs of all individuals who have significant hearing deficits that result in disabilities and handicaps. Concomitantly, the Center should be sensitive to accessibility issues for the broader population of hard-of-hearing individuals. The Center should work with community agencies as well as with other research Centers to develop and disseminate information.

Changes: The Secretary has changed the language throughout the priority to refer to "deaf and hard-of-hearing" persons, and has included references to different modes of interpretation. The Center is specifically required to develop cooperative relationships with community agencies.

Comment: One commenter suggested that the chronic underemployment of deaf and hard-of-hearing individuals is due to poor learning strategies, communication difficulties, and societal stigma, and urged that the priority concentrate on only these areas.

Discussion: The Secretary agrees that these are all serious barriers to employment for this population, but does not believe they should constitute the sole focus of this RRTC. In fiscal year 1990, NIDRR funded an RRTC on the rehabilitation of "low-functioning deaf" individuals that included a major focus on educational deficits for this population. NIDRR is also sponsoring considerable research on improving communications, both through technology and through personal support services, such as interpreters, among deaf individuals as well as between deaf individuals and hearing persons in their environments. The Secretary also believes that there are many additional factors involved in poor employment situations for individuals who are deaf, including poor vocational skills preparation, inadequate employment-related services, inadequate career-search skills, and poor preparation of employers, educators, counselors, and community groups to provide greater access to deaf persons. The Secretary believes that the proposed technical assistance and training activities constitute the proper approach to address issues of stigma or ignorance on the part of a broader population concerning the employment potential of deaf persons.

Changes: None.

Cardiovascular Rehabilitation

Comment: NIDRR received several comments questioning the need for this priority. The sense of the comments was that there is currently a very large Federal and private sector effort directed toward prevention and treatment of cardiovascular disease that includes research on functional assessment, studies of the natural course of coronary artery disease, and professional training and public education. The commenters argued that NIDRR resources could make very little incremental addition to these efforts and the NIDRR resources should be allocated to areas in which there was not such a large effort from other agencies.

Discussion: The Secretary agrees that NIDRR resources should be directed toward rehabilitation in areas that clearly are not being addressed substantially by other agencies. While the Secretary reserves judgment as to whether there may be other areas of cardiovascular rehabilitation not addressed adequately by other agencies, he has decided to withdraw this particular priority for further review.

Changes: The proposed priority is withdrawn.

Rehabilitation Engineering Centers

The Secretary did not receive any comments requesting substantive changes in the priority for this program.

Regional Information Exchange (RIE)

Comment: One commenter urged that RIEs should be required to conduct replication activities in two or more of the priority areas. Two other commenters argued that the function of an RIE in the area of psychiatric rehabilitation could be conducted only by an agency specializing in that area.

Discussion: Implementation of the concept of an RIE requires expertise in knowledge dissemination and utilization and in program assessment. The RIE model requires the RIE to obtain and use experts in various subject matter fields. The purpose of the RIE program is to establish a regional information exchange broker that can assist service providers in a number of specialty areas within the region. Therefore, the Secretary will require that each RIE disseminate exemplary projects in more than one priority area to ensure that brokerage capacity exists.

Changes: The priority is changed to read "two or more priority areas."

Comment: Two commenters urged that technology in general should be a priority for RIE programs.

Discussion: NIDRR is currently funding major efforts in technology services and technology dissemination through the Technology-Related Assistance program and through the Rehabilitation Engineering Center program. NIDRR's recent assessment of the RIE program has raised questions about the suitability of the RIE model for technology dissemination. Therefore, the Secretary elects not to include general technology services. The delivery of rehabilitation engineering services in vocational rehabilitation is one of the priority areas for the RIEs. Some commenters stressed the importance of the use of State planning data, especially school exit data, in transition programs, and suggested that this be a specific focus of the RIEs.

Changes: None.

Comment: Two commenters suggested that RIEs should be mandated to disseminate promising practices as well as exemplary programs.

Discussion: The Secretary believes there are many opportunities for the dissemination of promising practices in rehabilitation and special education, some of them funded by NIDRR. The RIE model, however, is based on the concept of promoting the replication of validated model programs. The RIE concept involves not only dissemination of information, but actual utilization of that information in replications facilitated by intensive technical assistance and expert help. The Secretary believes it is not desirable to promote replication of less than fully validated models, and that it would be a poor use of RIE resources to divert them away from the validation-replication process.

Changes: None.

Comment: Two commenters urged additional roles for consumers, *i.e.*, individuals with disabilities and their families, in the RIE process, either as sources of information or as target audiences for information and exemplary projects.

Discussion: The Secretary agrees that consumers must be included in the process of identifying and validating model programs.

The priority now states that the RIE project must "Develop and implement a procedure to validate exemplary programs * * * involving individuals with disabilities and technical experts in the validation process." The Secretary believes that since the purpose of the RIEs is to implement program replications, consumer organizations are involved as information targets to the extent they are involved in operating or facilitating program replications. The RIEs are not the primary mechanism for dissemination of rehabilitation information to consumer organizations.

Changes: None.

Comment: Several commenters urged that the priority focus on assisted housing for individuals with long-term mental illness was too restrictive, and emphasized the need for information in other areas. Some commenters have stressed that appropriate use of State data, especially school exiting data, is a key element in planning for transition programs, and suggested that RIEs focus on this aspect of transition programs.

Discussion: Priority areas for RIEs are selected based on both the needs of service delivery agencies and the availability of model projects that potentially could be validated and replicated. Most of the suggested additional priority areas in long-term mental illness are being addressed by the RRTCs, and the RRTCs have a strong mandate to disseminate information. However, the Secretary agrees that RIEs could contribute significantly to the resolution of transition problems by identifying and disseminating model State planning efforts.

Changes: The priority includes a specific requirement for the identification of exemplary practices in the use of school exiting data in planning State transition programs.

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DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.133A, 84.133B, 84.133D, and 84.133E]

Office of Special Education and Rehabilitative Services

National Institute on Disability and Rehabilitation Research; Invitation for Applications for New Awards Under Certain Programs for Fiscal Year 1991

Note to Applicants

This notice is a complete application package. The notice contains information, application forms, and instructions needed to apply for a grant under these competitions. NIDRR published a consolidated application package on August 1, 1990 at 55 FR 31318 for several programs in which there are no priorities. NIDRR also published a closing date notice on August 23, 1990 at 56 FR 34085 for State Grants for Technology-Related Assistance for Individuals with Disabilities under Public Law 100-407. The final priorities for the programs included in this consolidated application package are published in this issue of the **Federal Register**. This consolidated application package includes the closing dates, estimated funding, and application forms necessary to apply for awards under one of these programs. Potential applicants should consult the statement of the final priorities published in this issue to ascertain the substantive requirements for their applications.

The estimates of funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Applicable Regulations

The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and the following program regulations:

Research and Demonstration Program (CFDA No. 84.133A) 34 CFR parts 350 and 351.

Rehabilitation Research and Training Centers (CFDA No. 84.133B) 34 CFR parts 350 and 352.

Knowledge Dissemination and Utilization Program (CFDA No. 84.133D) 34 CFR parts 350 and 355.

Rehabilitation Engineering Centers Program (CFDA No. 84.133E) 34 CFR parts 350 and 353.

PROGRAM TITLE: RESEARCH AND DEMONSTRATION APPLICATION NOTICES FOR FISCAL YEAR 1991

CFDA No.	Program Title	Funding Priority	Deadline for Transmittal of Applications	Estimated No. of Awards	Estimated Size of Award Per Year	Project Period (Months)
84.133A	Research and Demonstration	Health Care Policy and Rehabilitation	March 1, 1991	1	$175,000	36
		National Job Coach Study	March 1, 1991	1	175,000	36
		Involving People With Psychiatric Disabilities as Consumer Advocates in Vocational Rehabilitation.	March 1, 1991	1	175,000	36
		National Study of Transition of Individuals with Severe Disabilities Leaving School.	March 1, 1991	1	175,000	36
		Alcohol and Substance Abuse as Barriers to Job Re-entry for Persons With Traumatic Brain Injury.	March 1, 1991	1	175,000	36
		Case Management in the Vocational Rehabilitation of Persons With Psychiatric Disability.	March 1, 1991	1	175,000	36

Purpose: Research and Demonstration Projects support research and demonstrations in single project areas on problems encountered by individuals with disabilities in their daily activities. These projects may conduct research on rehabilitation techniques and services, including analysis of medical, industrial, vocational, social, psychiatric, psychological, recreational, economic, and other factors to improve the rehabilitation of individuals with disabilities.

Selection criteria: The Secretary uses the following selection criteria to evaluate applications under this program:

(a) *Potential impact of outcomes:* Importance of Program (Weight 3.0). The Secretary reviews each application to determine to what degree—

(1) The proposed activity relates to the announced priority;

(2) The research is likely to produce new and useful information (research activities only);

(3) The need and target population are adequately defined;

(4) The outcomes are likely to benefit the defined target population;

(5) The training needs are clearly defined (training activities only);

(6) The training methods and developed subject matter are likely to meet the defined need (training activities only); and

(7) The need for information exists (utilization activities only).

(b) *Potential impact of outcomes:* Dissemination/Utilization (Weight 3.0). The Secretary reviews each application to determine to what degree—

(1) The research results are likely to become available to others working in the field (research activities only);

(2) The means to disseminate and promote utilization by others are defined;

(3) The training methods and content are to be packaged for dissemination and use by others (training activities only); and

(4) The utilization approach is likely to address the defined need (utilization activities only).

(c) *Probability of achieving proposed outcomes; program/project design* (Weight 5.0). The Secretary reviews each application to determine to what degree—

(1) The objectives of the project(s) are clearly stated;

(2) The hypothesis is sound and based on evidence (research and activities only);

(3) The project design/methodology is likely to achieve the objectives;

(4) The measurement methodology and analysis is sound (research and development/demonstration activities only);

(5) The conceptual model (if used) is sound (development/demonstration activities only);

(6) The sample populations are correct and significant (research and development/demonstration activities only);

(7) The human subjects are sufficiently protected (research and development/demonstration activities only);

(8) The device(s) or model system is to be developed in an appropriate environment;

(9) The training content is comprehensive and at an appropriate level (training activities only);

(10) The training methods are likely to be effective (training activities only);

(11) The new materials (if developed) are likely to be of high quality and uniqueness (training activities only);

(12) The target populations are linked to the project (utilization activities only); and

(13) The format of the dissemination medium is the best to achieve the desired result (utilization activities only).

(d) *Probability of achieving proposed outcomes*: Key Personnel (Weight 4.0). The Secretary reviews each application to determine to what degree—

(1) The principal investigator and other key staff have adequate training and/or experience and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity;

(2) The principal investigator and other key staff are familiar with pertinent literature and/or methods;

(3) All required disciplines are effectively covered;

(4) Commitments of staff time are adequate for the project; and

(5) The applicant is likely, as part of its non-discriminatory employment practices, to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly;

(e) *Probability of achieving proposed outcomes: evaluation plan* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) There is a mechanism to evaluate plans, progress and results;

(2) The evaluation methods and objectives are likely to produce data that are quantifiable; and

(3) The evaluation results, where relevant, are likely to be assessed in a service setting.

(f) *Program/project management; plan of operation* (Weight 2.0). The Secretary reviews each application to determine to what degree—

(1) There is an effective plan of operation that insures proper and efficient administration of the project(s);

(2) The applicant's planned use of its resources and personnel is likely to achieve each objective;

(3) Collaboration between institutions, if proposed, is likely to be effective; and

(4) There is a clear description of how the applicant will include eligible participants who have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(g) *Program/project management: adequacy of resources* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The facilities planned for use are adequate;

(2) The equipment and supplies planned for use are adequate; and

(3) The commitment of the applicant to provide administrative support and adequate facilities is evident.

(h) *Program/project management: (budget and cost effectiveness* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The budget for the project(s) is adequate to support the activities;

(2) The costs are reasonable in relation to the objectives of the project(s); and

(3) The budget for subcontracts (if required) is detailed and appropriate.

Eligible Applicants

Parties eligible to apply for grants under this program are public and private nonprofit and for-profit agencies and organizations, including institutions of higher education and Indian tribes and tribal organizations.

Authority: 29 U.S.C. 761a and 762.

PROGRAM TITLE: REHABILITATION RESEARCH AND TRAINING CENTERS APPLICATION NOTICES FOR FISCAL YEAR 1991

CFDA No.	Program Title	Funding Priority	Deadline for Transmittal of Applications	Estimated No. of Awards	Estimated Size of Awards Per Year	Project Period (Months)
84.133B	Rehabilitation Research and Training Centers.	Rehabilitation of Blind and Visually-Impaired Individuals.	February 4, 1991	1	$650,000	60
		Rehabilitation of Deaf and Hard-of-Hearing Individuals.	February 4, 1991	1	650,000	60

Purpose: Rehabilitation Research and Training Centers conduct coordinated and advanced programs of rehabilitation research, provide training—including undergraduate, graduate, and inservice training—to research and other rehabilitation personnel, and assist individuals to more effectively provide rehabilitation services.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications under this program.

(a) *Relevance and importance of the research program (20 points).* The Secretary reviews each application to determine to what degree—

(1) The proposed activities are responsive to a priority established by the Secretary and address a significant need of a disabled target population and rehabilitation service providers;

(2) The overall research program of the Center includes appropriate interdisciplinary and collaborative research activities, is likely to lead to new and useful knowledge in the priority area, and is likely to become a nationally recognized source of scientific knowledge; and

(3) The applicant demonstrates that all component activities of the center are related to the overall objective of the Center, and will build upon and complement each other to enhance the likelihood of solving significant rehabilitation problems.

(b) *Quality of the research design (35 points).* The Secretary reviews each application to determine to what degree—

(1) The applicant proposes a comprehensive research program for the entire project period, including at least three interrelated research projects;

(2) The research design and methodology of each proposed activity are meritorious in that—

(i) The literature review is appropriate and indicates familiarity with current research in the field;

(ii) The research hypotheses are important and scientifically relevant;

(iii) The sample populations are appropriate and significant;

(iv) The data collection and measurement techniques are appropriate and likely to be effective;

(v) The data analysis methods are appropriate; and

(vi) The applicant assures that human subjects, animals, and the environment are adequately protected; and

(3) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses and could be used for planning future research, including generation of new hypotheses where applicable.

(c) *Quality of the training and dissemination program (25 points).* The Secretary reviews each application to determine the degree to which—

(1) The proposed plan for training and dissemination provides evidence that research results will be effectively disseminated and utilized based on the identification of appropriate and accessible target groups; the proposed training materials and methods are appropriate; the proposed activities are relevant to the regional and national needs of the rehabilitation field; and the training materials and dissemination packages will be developed in alternate media that are usable by people with various types of disabilities.

(2) The proposed plan for training and dissemination provides for—

(i) Advanced training in rehabilitation research;

(ii) Training rehabilitation service personnel and other appropriate individuals to improve practitioner skills based on new knowledge derived from research;

(iii) Training packages that make research results available to service providers, researchers, educators, disabled individuals, parents, and others;

(iv) Technical assistance or consultation that is responsive to the concerns of service providers and consumers; and

(v) Dissemination of research findings through publication in professional journals, textbooks, and consumer and other publications, and through other appropriate media such as audiovisual materials and telecommunications.

(d) *Qualiity of the organization and management (20 points).* The Secretary reviews each application to determine the degree to which—

(1) The staffing plan for the Center provides evidence that the project director, research director, training director, principal investigators, and other personnel have appropriate training and experience in disciplines required to conduct the proposed activities; the commitment of staff time is adequate to conduct all proposed activities; and the Center, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping conditions;

(2) The budgets for the Center and for each component project are reasonable, adequate, and cost-effective for the proposed activities;

(3) The facilities, equipment, and other resources are adequate and are appropriately accessible to persons with disabilities;

(4) The plan of operations is adequate to accomplish the Center's objectives and to ensure proper and efficient management of the Center;

(5) The proposed relationships with Federal, State, and local rehabilitation service providers and consumer organizations are likely to ensure that the Center program is relevant and applicable to the needs of consumers and service providers;

(6) The past performance and accomplishments of the applicant indicate an ability to complete successfully the proposed scope of work;

(7) The application demonstrates appropriate commitment and support by the host institution and opportunities for interdisciplinary activities and collaboration with other institutions; and

(8) The plan for evaluation of the Center provides for an annual assessment of the outcomes of the research, the impact of the training and dissemination activities on the target populations, and the extent to which the overall objectives have been accomplished.

Eligible Applicants

Institutions of higher education and agencies collaborating with institutions of higher education, including Indian tribes and tribal organizations, are eligible to apply for awards under this program.

Authority: 29 U.S.C. 762.

PROGRAM TITLE: KNOWLEDGE DISSEMINATION AND UTILIZATION APPLICATION NOTICES FOR FISCAL YEAR 1991

CFDA No.	Program Title	Funding Priority	Deadline for Transmittal of Applications	Estimated No. of Awards	Estimated Size of Award Per Year	Project Period (Months)
84.133D	Knowledge Dissemination and Utilization.	Regional Information Exchange	January 18, 1991	6	$200,000	36

Purpose: The Knowledge Dissemination and Utilization Program is designed to support activities that will ensure that rehabilitation knowledge generated from projects and centers funded by the Institute and other sources is fully utilized to improve the lives of individuals with disabilities.

Selection criteria: To evaluate applications under this program, the Secretary uses the same selection criteria as those published above under the Research and Demonstration Program, 84.133A.

Eligible applicants: Parties eligible to apply for grants under this program are public and private nonprofit and for-profit agencies and organizations, including institutions of higher education and Indian tribes and tribal organizations.

Authority: 29 U.S.C. 761(a), 762(a), and 762(b)(5).

PROGRAM TITLE: REHABILITATION ENGINEERING CENTERS APPLICATION NOTICES FOR FISCAL YEAR 1991

CFDA No.	Program Title	Funding Priority	Deadline for Transmittal of Applications	Estimated No. of Awards	Estimated Size of Award Per Year	Project Period (Months)
84.133E	Rehabilitation Engineering Centers.	Technology for Older Persons With Disabilities.	February 4, 1991	1	$500,000	60

Purpose: Rehabilitation Engineering Centers (REC) conduct coordinated programs of advanced research of an engineering or technological nature, in order to develop and test new engineering solutions to problems of disability, to develop systems for the exchange of technical and engineering information and to improve the distribution of technological devices and equipment to individuals with disabilities. Each REC must be located in a clinical rehabilitation setting and is encouraged to collaborate with institutions of higher education.

Selection criteria: The Secretary uses the following selection criteria to evaluate applications under this program.

(a) *Relevance and importance of the research program* (25 points). The Secretary reviews each application to determine to what degree—

(1) The proposed activities are responsive to a priority established by the Secretary and address a significant need of a disabled target population and rehabilitation service providers;

(2) The overall research program of the Center includes appropriate interdisciplinary and collaborative research activities, is likely to lead to new and useful knowledge in the priority area and to the development of new technology or new applications of existing technology, and is likely to become a nationally recognized source of information on technology in the priority area; and

(3) The applicant demonstrates that all component activities of the Center are related to the overall objectives of the Center, and will build upon and complement each other to enhance the likelihood of finding solutions to significant rehabilitation problems.

(b) *Quality of the research design* (25 points). The Secretary reviews each application to determine to what degree—

(1) The applicant proposes a comprehensive program of research for the total project period, including at least three interrelated research projects;

(2) The research design and methodology of each proposed activity are meritorious in that—

(i) The literature review is appropriate and indicates familiarity with the state-of-the-art and current research in rehabilitation technology;

(ii) The research hypotheses are important and scientifically relevant;

(iii) The sample populations are appropriate and significant;

(iv) The data collection and measurement techniques are appropriate and likely to be effective;

(v) The data analysis methods are appropriate; and

(vi) The applicant assures that human subjects, animals, and the environment are adequately protected;

(3) The plan for development, clinical testing, and evaluation of new devices and technology is likely to yield significant products; and

(4) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses and could be used for planning additional research, including the generation of new hypotheses where applicable.

(c) *Quality of the dissemination and utilization program* (25 points). The Secretary reviews each application to determine the degree to which—

(1) The proposed plan for dissemination provides evidence that research results will be effectively disseminated and utilized based on the identification of appropriate and accessible target groups; the proposed activities are relevant to the regional and national needs of the rehabilitation field; and dissemination packages will be prepared in a form usable by individuals with all types of disabilities;

(2) The proposed plan for dissemination and utilization of the research and development provides for—

(i) Orientation programs for rehabilitation service personnel to improve the application of rehabilitation technology;

(ii) Programs which specifically demonstrate means for utilizing rehabilitation technology;

(iii) Technical assistance and consultation that are responsive to concerns of service providers and consumers; and

(iv) Dissemination of research findings through publication in professional journals, textbooks, and consumer and other publications, and through other appropriate media such as audiovisual materials and telecommunications, in an effort to make research results accessible to manufacturers, rehabilitation service providers, and researchers, educators, disabled individuals and their families, and others; and

(3) There is an appropriate plan to ensure the distribution and utilization of new devices and technology.

(d) *Quality of the organization and management* (25 points). The Secretary reviews each application to determine the degree to which—

(1) The staffing plan for the Center provides evidence that the principal investigator and other personnel have appropriate training and experience in disciplines required to conduct the proposed activities; the commitment of time for all staff is adequate to conduct all proposed activities; and the Center, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) The budgets for the Center and each of the proposed activities are reasonable, adequate, and cost-effective for the proposed activities;

(3) The facilities, equipment, and other resources are adequate and are appropriately accessible to persons with disabilities;

(4) The plan of operations is adequate to accomplish the Center's objectives and to ensure proper and efficient management of the Center;

(5) The proposed relationships with Federal, State, and local rehabilitation service providers and consumer organizations are likely to ensure that the Center program is relevant and applicable to the needs of consumers and service providers;

(6) The past performance and accomplishments of the applicant indicate an ability to complete successfully the proposed scope of work;

(7) The application demonstrates appropriate commitment and support by the host institution and opportunities for interdisciplinary activities and collaboration with other institutions; and

(8) The plan for evaluation of the Center will assess annually the outcomes of the discrete and interrelated research projects, the impact of the training and dissemination activities on the target populations, and the extent to which the overall objectives have been accomplished.

Eligible Applicants

Parties eligible to apply for grants under this program are public and private nonprofit and for-profit agencies and organizations, including institutions of higher education and Indian tribes and tribal organizations.

Authority: 29 U.S.C. 760, 762(b)(2).

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # (Applicant must insert number and letter)), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # (Applicant must insert number and letter)), room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Form—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Part IV: Public Reporting Burden Estimate.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions. (NOTE: ED Form GCS–009 is intended for the use of primary participants and should not be transmitted to the Department.)

Certification Regarding Drug-Free Workplace Requirements: Grantees Other than Individuals (ED 80–0004).

Certificate Regarding Drug-Free Workplace Requirements: Grantees Who Are Individuals (ED 80–0005).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

Further Information Contact

The National Institute on Disability and Rehabilitation Research, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 732–1141; deaf and hearing impaired-persons may call (202) 732–5373 for TDD services.

Authority: 29 U.S.C. 760–762.

Dated: November 28, 1990.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitation Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

Frequent Questions

1. Can I Get an Extension of the Due Date

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the

revised due date is published in the *Federal Register*. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should Be Included in the Application

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should Be Used for the Application

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One Program Competition in NIDRR or More Than One Application to a Program

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What is the Allowable Indirect Cost Rate

The limits on indirect costs vary according to the program and the type of application.

The statutory limit for indirect charges in the Rehabilitation Research and Training Centers program is 15 percent of total project costs.

Applicants in the R&D, D&U, and REC programs should limit indirect charges to the organization's approved rate.

6. Can Profitmaking Businesses Apply for Grants

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply for Grants

No. Only organizations are eligible to apply for grants under NIDRR programs.

8. Is There a Cost-Sharing or Matching Requirement

Cost-sharing is required in the Research and Demonstration Projects program, with certain exceptions noted in the law; and the Knowledge Dissemination and Utilization program. For the Rehabilitation Engineering Centers, the Secretary has the option to require matching. It is generally the practice of the agency to require cost-sharing under this program.

There is no set rate for cost-sharing. The cost-sharing is negotiated at the time an award is made and is not part of the evaluation of the application.

9. Can NIDRR Staff Advise Me Whether My Project Is of Interest To NIDRR or Likely to be Funded

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

10. How Do I Assure That My Application Will Be Referred to the Most Appropriate Panel for Review

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including the title of the priority to which they are responding.

11. How Soon After Submitting My Application Can I Find out if It Will Be Funded

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

12. Can I Call NIDRR To Find out if My Application Is Being Funded

No! When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

13. If My Application Is Successful, Can I Assume I will Get the Requested Budget Amount in Subsequent Years?

No. Those budget projects are necessary and helpful for planning purposes. However, a complete budget and budget justification must be submitted for each year of the project and there will be negotiations on the budget each year.

14. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name	Organizational Unit
Address *(give city, county, state, and zip code)*	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A State
B County
C Municipal
D Township
E Interstate
F Intermunicipal
G Special District
H Independent School Dist.
I State Controlled Institution of Higher Learning
J Private University
K Indian Tribe
L Individual
M Profit Organization
N Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A Increase Award B Decrease Award C Increase Duration
D Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1 Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6 Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

— "New" means a new assistance award.

— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10 Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11 Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23 Remarks

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

INSTRUCTIONS FOR COMPLETION OF PART III

NATIONAL INSTITUTE ON DISABILITY AND REHABILITATION RESEARCH

PROJECT NARRATIVE FOR NEW APPLICATIONS

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviweing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducting this burden, to: U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and to the Office of Management and Budget, Paperwork Reducation Project 1820-0027, Washington, DC 20503.

(Information collection approved under OMB control number 1820-0027. Expiration date: September 30, 1992.)

The successful narrative should include the basic information described below and, exluding resumes of key personnel, should be limited to:

* 100 pages for applications for Rehabilitation Research and Training Centers, Rehabilitation Engineering Centers.

* 40 pages for application under the Research and Demdonstrations Projects, Knowledge Dissemination and Utilization Projects.

The narrative for new application may be organized under the major headings in the regulations governing the specific programs. THe applicant must respond to the selection criteria for each program listed below.

Research and Demonstration Project - 34 CFR 351. Selection criteria for this program can be found in 34 CFR 350.34.

Rehabilitation Research and Training Centers - 34 CFR 352.31.

Rehabilitation Engineering Centers - 34 CFR 353.31.

Knowledge Dissemination and Utilization Programs - 34 CFR 355. Selection criteria for this program can be found in 34 CFR 350.34.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3 Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5 Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace.

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0346-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*

Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

[FR Doc. 90-28340 Filed 12-3-90; 8:45 am]

BILLING CODE 4000-01-C

federal register

Tuesday
December 4, 1990

Part III

Department of the Interior

National Park Service

Abandoned Shipwreck Act; Final Guidelines; Notice

DEPARTMENT OF THE INTERIOR

National Park Service

Abandoned Shipwreck Act Guidelines

AGENCY: National Park Service, Department of the Interior.

ACTION: Final guidelines.

SUMMARY: These final advisory guidelines are to assist the States and the appropriate Federal agencies in developing legislation and regulations to carry out their responsibilities under the Abandoned Shipwreck Act of 1987. The guidelines provide advice on establishing State and Federal agency shipwreck management programs; funding shipwreck programs and projects; surveying, identifying, documenting, and evaluating shipwrecks; providing for public and private sector recovery of shipwrecks; providing public access to shipwrecks; interpreting shipwreck sites; establishing volunteer programs; and creating and operating underwater parks or preserves. Issuance of these final guidelines fulfills the National Park Service's obligation under the Act to issue such guidelines.

EFFECTIVE DATE: These advisory guidelines take effect on December 4, 1990.

ADDRESSES: Requests for copies of the final "Abandoned Shipwreck Act Guidelines" should be addressed to Douglas H. Scovill, Acting Departmental Consulting Archeologist, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127. Single copies of the final guidelines will be sent to persons, organizations, and State and Federal agencies that have previously requested copies or have provided comments on the development or subsequent revision of the guidelines. Those persons, organizations and agencies do not need to request copies of the final guidelines; copies will be distributed when available.

FOR FURTHER INFORMATION CONTACT: Michele C. Aubry (Departmental Consulting Archeologist's office) at 202-343-1879 or FTS 343-1879.

SUPPLEMENTARY INFORMATION:

Background

These final "Abandoned Shipwreck Act Guidelines" are being issued under the authority of the Abandoned Shipwreck Act (Pub. L. 100-298; 43 U.S.C. 2101-2106). Section 5 of the Act directs the National Park Service to issue guidelines to assist the States and the appropriate Federal agencies in developing legislation and regulations to carry out their responsibilities under the Act.

The Act says that the guidelines "shall seek to: (1) Maximize the enhancement of cultural resources; (2) foster a partnership among sport divers, fishermen, archeologists, salvors, and other interests to manage shipwreck resources of the States and the United States; (3) facilitate access and utilization by recreational interests; and (4) recognize the interests of individuals and groups engaged in shipwreck discovery and salvage." The Act also requires that the guidelines be developed after consulting with appropriate public and private sector interests (including the Secretary of Commerce, the Advisory Council on Historic Preservation, sport divers, State Historic Preservation Officers, professional dive operators, salvors, archeologists, historic preservationists, and fishermen).

Preparation of the Guidelines

The Abandoned Shipwreck Act was signed into law on April 28, 1988, by the President of the United States. By mid-July 1988, the National Park Service had developed and sent to each State a questionnaire that requested information on existing and pending State legislation and regulations about the management of shipwrecks in State waters. The questionnaire also asked for information on the State's activities related to the preservation of shipwrecks, the facilitation of recreational access to shipwrecks, the development and dissemination of interpretive information about shipwrecks, and the regulation of commercial fishing and salvage activities affecting shipwrecks. Forty-seven (or 84 percent) of the 56 States and territories polled provided responses to the questionnaire.

During September and October 1988, the National Park Service held public meetings in Washington, DC; San Francisco, CA; Seattle, WA; Austin, TX; Beaufort, NC; Colchester, VT; Lyndhurst, NJ; Madison, WI; Tampa, FL; New Orleans, LA; and Charleston, SC. The meetings were designed to provide the various public and private sector interests with an opportunity to provide suggestions to the National Park Service on the development of the guidelines.

Approximately 500 people attended the meetings and over 120 people voiced their opinions (or that of their organizations) in verbal statements that were recorded in 769 pages of transcripts. In addition, about 130 people sent letters to the National Park Service to express their opinions or that of the organization they represent.

All questionnaire responses, transcribed verbal statements, and written suggestions were fully considered by the National Park Service prior to developing the proposed "Abandoned Shipwreck Act Guidelines." In fact, many of the suggestions provided by the States, public meeting attendees and other members of the public contributed substantially to the preparation of the guidelines.

As required by the Act, the proposed guidelines were published in the **Federal Register** (54 FR 13642; April 4, 1989). However, knowing that sport divers, professional dive operators, salvors, fishermen, archeologists, and historic preservationists do not routinely have access to or read the **Federal Register**, the National Park Service sent press releases to the editors of numerous national and regional sport diving, maritime, archeological, and historic preservation newsletters, magazines and journals. In addition, over 3,500 copies of the proposed guidelines were distributed to the various interest groups and persons. Finally, in order to provide the public with a sufficient amount of time to obtain, read, digest, discuss, and prepare written comments on the proposed guidelines, the National Park Service elected to issue the proposed guidelines for a six month comment period instead of the more usual one to three months.

Written comments were received from 66 sources, including 30 from individuals, 16 from State agencies, 14 from organizations, and six from Federal agencies. The individuals who provided comments were primarily sport divers. The organizations that provided comments included sport diving associations, maritime societies and museums, avocational research organizations, and charter boat associations.

Comments were addressed to all sections of the proposed guidelines. However, a preponderance of comments were concerned with four specific issues: (1) The definitions for the terms "historic" and "non-historic" shipwrecks, (2) the assurance of recreational access by the public to shipwrecks, and (3) the withholding and the disclosure of locational information about shipwrecks, and (4) the regulation of commercial salvage and souvenir collecting activities at shipwrecks.

All comments were fully considered by the National Park Service when revising the guidelines for issuance as final guidelines. Valid concerns were addressed to the extent of the National Park Service's legal authorities. Some

suggestions were not included because they either were beyond the scope of the guidelines or were inconsistent with the Abandoned Shipwreck Act. Many of the suggestions were incorporated and contributed positively toward improving and clarifying the guidelines.

Major Changes in Response to Public Comments

Introduction

The introduction to the final "Abandoned Shipwreck Act Guidelines" remains basically the same as it appeared in the proposed guidelines.

Several commenters raised concerns that the National Park Service may make the guidelines a requirement for State historic preservation programs even though the guidelines are supposed to be advisory and, therefore, non-binding. To allay the commenters' concerns, language has been added to emphasize that the guidelines are advisory and non-binding, and are not being used to review State historic preservation programs for compliance with the National Historic Preservation Act and the terms and conditions of Historic Preservation Fund grant awards. Unless statutorily required, no changes will be made to State historic preservation program requirements without prior consultation with the States.

Part I. Definitions

Part I contains the definitions for key terms used in the Act and in the final "Abandoned Shipwreck Act Guidelines." Three definitions have been revised, one has been deleted, and seven have been added.

The definition for the term "abandoned" shipwreck has been expanded to provide examples of vessels entitled to sovereign immunity. In addition, it notes that when the owner of a sunken vessel is paid the full value of the vessel (such as receiving payment from an insurance underwriter), title to the wrecked vessel is passed to the party who paid the owner. The definition also notes that under the Rivers and Harbors Act, owners of sunken vessels are required either to mark and subsequently remove the wrecked vessel and its cargo or to provide legal notice of abandonment to the U.S. Coast Guard and the U.S. Army Corps of Engineers. In the absence of such action by the owner, a shipwreck ordinarily is treated as abandoned after the expiration of 30 days from the sinking.

A number of commenters felt that the definition for the term "historic" shipwreck was too broad and that embedded shipwrecks should not be treated as historic shipwrecks unless they have been evaluated and determined to be historic. The commenters recommended that "historic" shipwrecks be defined according to their historical qualities only, without regard to whether they are embedded. The definition has been revised accordingly.

In the proposed guidelines, the definition for the term "submerged lands" included a reference to the term "lands beneath navigable waters." Several commenters asked for clarification on what "lands beneath navigable waters" means. The Act defines "lands beneath navigable waters" by citing the definition for that term contained in section 2 of the Submerged Lands Act. The Submerged Lands Act provides a clear description of what "lands beneath navigable waters" means. Rather than merely referencing it in the guidelines, it has been added to the definition for the term "submerged lands." Examples also have been added.

The definition for the term "conservation" has been deleted; instead, the decision was made to rely on dictionary definitions.

Several commenters recommended that the term "non-historic" shipwreck be defined. Such a definition has been added.

Finally, definitions for six terms that are defined in the Act have been added to the guidelines. The terms are "embedded," "Indian lands," "Indian tribe," "National Register," "public lands," and "State." The definitions are the same as those contained in the Act.

However, in regard to the term "embedded," several commenters asked for clarification on what is meant by tools of excavation. Tools of excavation are tools used to remove or displace bottom sediments or coralline formations to gain access to embedded shipwrecks. Examples have been provided; they clearly indicate that diving equipment normally worn by recreational divers while exploring or viewing shipwreck sites are not considered to be tools of excavation.

Part II. Guidelines

Part II contains ten sets of guidelines for use by the States and the appropriate Federal agencies in developing legislation and regulations to carry out their responsibilities under the Act. Guidelines to assist the States in establishing shipwreck management programs are in subpart A. Guidelines to assist Federal agencies in establishing shipwreck management programs are in subpart B. Subpart C presents guidelines for funding shipwreck programs and projects. Subpart D presents guidelines for surveying and identifying shipwrecks. Subpart E presents guidelines for documenting and evaluating shipwrecks. Guidelines to assist the States in providing for public and private sector recovery of shipwrecks are in subpart F. Subpart G presents guidelines for providing public access to shipwrecks. Subpart H presents guidelines for interpreting shipwreck sites. Subpart I presents guidelines for establishing volunteer programs. Guidelines to assist States in creating and operating underwater parks or preserves are in subpart J.

Subpart A. The guidelines in subpart A have been expanded and rearranged. Final guideline no. 3 has been revised to say the States should assign responsibility for State-owned shipwrecks to appropriate agencies. The guideline notes that while it would be desirable to assign responsibility to a single agency, it often is not practical to do so for several reasons. The guideline identifies several agencies having different expertise that should be assigned various responsibilities for shipwrecks (e.g., an agency experienced in historic preservation matters should have jurisdiction over historic shipwrecks—but not over non-historic shipwrecks—while an agency experienced in recreational resource management and historic site management should be responsible for the day to day management and protection of shipwrecks located in State underwater parks or preserves).

A new guideline no. 4 says the State should establish regulations, policies or procedures for the long-term management of State-owned shipwrecks. A new guideline no. 8 says the States should use the National Register of Historic Places criteria to determine the historical significance of shipwrecks. A new guideline no. 11 says the States should provide legal recourse for persons affected by the State's shipwreck management program, and identifies particular situations where an affected person should be provided with an opportunity to appeal decisions made by the State.

Proposed guideline no. 7 (on accepting donations) has been moved to subpart C, while proposed guideline no. 8 (on confirming the abandonment of shipwrecks) and proposed guideline no. 9 (on treating human remains in shipwrecks) have been moved to subpart D.

Subpart B. The guidelines in subpart B are a consolidation of two sets of guidelines that appeared in the proposed

guidelines; that is, the proposed guidelines for considering and mitigating effects of Federal activities on historic shipwrecks and the proposed guidelines for managing shipwrecks under Federal jurisdiction. The former set of proposed guidelines have been consolidated into a single new guideline no. 4, which says Federal agencies should consider the effects of proposed undertakings on historic shipwrecks in accordance with section 106 of the National Historic Preservation Act. The latter set of proposed guidelines have been rearranged but remain basically the same as they appeared in the proposed guidelines, except as follows. Proposed guideline no. 4 (on treating human remains in shipwrecks) and proposed guideline no. 5 (on confirming the abandonment of shipwrecks) have been moved to subpart D. A new guideline no. 5 says Federal agencies should conduct activities affecting shipwrecks located in the coastal zone in accordance with section 307 of the Coastal Zone Management Act.

Subpart C. The guidelines in subpart C have been rearranged but remain basically the same as they appeared in the proposed guidelines, except as follows. Final guidelines nos. 8 and 10 were moved to this subpart from other sections of the proposed guidelines. A new guideline no. 11 says commercial salvors should be required to post performance bonds so sufficient funds would be available to complete the salvage activity according to the terms of the contract if the salvor is unable to do so.

Subpart D. The guidelines in subpart D remain basically the same as they appeared in the proposed guidelines, except as follows. Proposed guideline no. 7 (on preparing a shipwreck inventory) has been moved to subpart E. Final guidelines nos. 7 and 8 were moved to this subpart from other sections of the proposed guidelines.

A new guideline no. 9 says that Act requires that the public be given adequate notice of the location of any shipwreck to which U.S. title is asserted under the Act. The guideline sets forth what information, at a minimum, should be provided. The guideline notes that under certain circumstances, the exact location of a shipwreck may be withheld—this is not a violation of the Freedom of Information Act (5 U.S.C. 552) as some commenters suggested—but, in such cases, locational information of a more general nature should be given. The guideline notes that withholding locational information of a general nature would be inconsistent with the Act and the final "Abandoned Shipwreck Act Guidelines."

One commenter suggested that the requirement in the Act to provide adequate public notice of the location of shipwrecks to which U.S. title is asserted applies only to those shipwrecks that are included in or determined eligible for inclusion in the National Register. That interpretation of Act is not correct; the requirement applies to all three categories of abandoned shipwrecks to which U.S. title is asserted under section 6 of the Act.

Subpart E. The guidelines in subpart E are a consolidation of two sets of guidelines that appeared in the proposed guidelines; that is, the proposed guidelines for evaluation and the proposed guidelines for documentation. In regard to the former set of guidelines, proposed guideline no. 2 (on using non-destructive methods) has been incorporated into final guideline no. 6 in subpart D. Final guideline no. 5 (on preparing a shipwreck inventory) was moved to this subpart from subpart D.

One commenter asked why the States and Federal agencies should nominate historically significant shipwrecks for listing in the National Register of Historic Places or for designation as National Historic Landmarks. The primary reason why the States and Federal agencies should do this is to fulfill their responsibilities under the National Historic Preservation Act to nominate historic properties under their ownership or control to the National Register. Listing a historic property in the National Register makes it eligible to receive Historic Preservation Fund grants for preservation purposes. Being listed (or being eligible for listing) also provides a measure of protection, under section 106 of the National Historic Preservation Act, from the potential adverse effects of proposed Federal projects and programs. Designation as a National Historic Landmark provides additional protection, under section 110(f) of the National Historic Preservation Act, from the potential adverse effects of proposed Federal undertakings. National Historic Landmarks threatened with demolition or impairment also are eligible to receive direct grants for preservation purposes from the Secretary of the Interior.

Subpart F. The guidelines in subpart F are a consolidation of two sets of guidelines that appeared in the proposed guidelines; that is, the proposed guidelines for treatment of non-historic shipwrecks and the proposed guidelines for archeological recovery of historic shipwrecks. Those two sets of proposed guidelines received more public comments than any other set of proposed guidelines. The majority of commenters felt that the guidelines should apply to both historic and non-historic shipwrecks. Commenters also felt that the guidelines were inconsistent with the Act in that they did not provide for appropriate private sector recovery of State-owned historic shipwrecks. As a result, these guidelines have been revised substantially.

Final guideline no. 1 says the States should establish policies, criteria and procedures for appropriate public and private sector recovery of State-owned shipwrecks. The guideline provides advice on the content of such policies, criteria and procedures.

Final guideline no. 2 says the States should authorize only those public and private sector recovery activities at State-owned shipwrecks that are in the public interest. The guideline provides advice on how to determine whether a proposed recovery activity is in the best interests of the public.

Final guideline no. 3 says the States should protect particular State-owned shipwrecks from commercial salvage, treasure hunting, and private collecting activities. The guideline sets forth criteria for the States to use to determine whether a particular shipwreck should be protected.

Final guideline no. 4 says the States should require that any recovery at State-owned historic shipwrecks be done in a professional manner. The guideline sets forth terms and conditions for the States to attach to any permit, license or contract authorizing the scientific excavation, commercial salvage or treasure hunting of State-owned historic shipwrecks.

Final guideline no. 5 says the States should allow public and private sector recovery activities at State-owned non-historic shipwrecks without archeological conditions.

Final guideline no. 6 says the States should, as appropriate, transfer title to artifacts and other materials recovered from State-owned shipwrecks by the private sector to private parties. The guideline provides advice on steps the States should take before transferring title to any artifacts to private parties.

Final guideline no. 7 says the States should disseminate information on public and private sector recovery activities to the public and the scientific community, and identifies numerous methods for doing so.

Final guideline no. 8 says the States should discourage the recovery and display of intact shipwrecks because of

the prohibitive expense and the perpetual costs associated with doing so.

Subpart G. The guidelines in subpart G have been rearranged but remain basically the same as they appeared in the proposed guidelines. Final guideline no. 5 has been expanded to address regulating public access at shipwrecks entitled to sovereign immunity. The guideline says that, in the absence of specific instructions from the applicable sovereign nation regarding access to its shipwrecks, under customary international law, access by any U.S. national is prohibited. The guideline notes the conditions under which sovereigns generally grant permission.

Subpart H. The guidelines in subpart H have been consolidated and rearranged. In addition, two new guidelines have been added. New guideline no. 1 says interpretive efforts should present information on the vessel's history and the shipwreck's various values and uses. New guideline no. 6 says permittees, licensees and contractors should be required to disseminate information about recovery activities at historic shipwrecks.

Subpart I. The guidelines in subpart I are a consolidation of two sets of guidelines that appeared in the proposed guidelines; that is, the proposed guidelines for education and the proposed guidelines for volunteer programs. The guidelines have been rearranged but remain basically the same as they appeared in the proposed guidelines. However, proposed guideline no. 5 (on encouraging scientific and educational organizations to participate in shipwreck projects) has been moved to subpart C.

Subpart J. The guidelines in subpart J remain basically as they appeared in the proposed guidelines. However, at the suggestion of several commenters, proposed guideline no. 8 (on adding new dive sites to parks and preserves) has been deleted. The commenters felt that parks should be designated to protect existing historic shipwrecks and other submerged resources, not resources that are contrived. In addition, they felt that the State's limited monetary resources should be devoted to protecting existing historic shipwrecks rather than to stripping and sinking non-historic vessels, which is very costly. We agree; accordingly, the guideline has been deleted.

Part III. Abandoned Shipwreck Act

A few commenters suggested that certain provisions of the Act be amended (such as retaining the law of finds and the law of salvage for abandoned shipwrecks claimed by the U.S. Government under the Act, and asserting U.S. title to sunken aircraft, trains and automobiles). A few others suggested that the Act be repealed. It is beyond the authority of the National Park Service to enact amendments to or repeal any Federal statute. Such legislative actions are reserved for the U.S. Congress. Thus, the suggestions have not been adopted.

Other commenters suggested that the guidelines be changed in ways that would have been inconsistent with the Act (such as withholding from the public the locations of abandoned shipwrecks claimed by the U.S. Government under the Act, auditing State shipwreck management programs, and penalizing States that do not implement the Act's provisions). Such changes have not been incorporated into the guidelines.

It is important that the States, the appropriate Federal agencies, and other interested parties be fully cognizant of the purpose and content of the Act. Thus, the Act has been reprinted, in its entirety, in a new Part III to the final "Abandoned Shipwreck Act Guidelines."

Part IV. Shipwrecks in the National Register of Historic Places

A new Part IV has been added to the final "Abandoned Shipwreck Act Guidelines." It provides information on shipwrecks (and hulks) listed in or determined eligible for listing in the National Register of Historic Places as of December 4, 1990. Where known, information is presented on the shipwreck's popular name and the vessel's name, if different; type and date of construction; wreck date and location; owner and manager, if different; and level of historical significance.

Publication of this information constitutes notice to the public that, under the Act, the U.S. Government has asserted title to the abandoned shipwrecks on the list and has transferred its title to the respective States in or on whose submerged lands the shipwrecks are located, except for shipwrecks in or on public lands and Indian lands. The U.S. Government retains its title to shipwrecks in or on public lands while Indian tribes hold title to those in or on Indian lands.

Authorship

Michele C. Aubry (archeologist and program analyst in the National Park Service) is the author of the final "Abandoned Shipwreck Act Guidelines." James P. Delgado (maritime historian and diver in the National Park Service) and Patricia C. Knoll (archeologist and diver on contract to the National Park Service from the National Conference of State Historic Preservation Officers) also contributed material that was incorporated into the guidelines.

Dated: October 5, 1990.

Herbert S. Cables, Jr.,

Acting Director, National Park Service.

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Part IV Shipwrecks in the National Register of Historic Places.

Authority: 43 U.S.C. 2101–2106.

Introduction

The Abandoned Shipwreck Act (Pub. L. 100–298; 43 U.S.C. 2101–2106) was signed into law by the President of the United States on April 28, 1988. Under the Act, the U.S. Government asserted title to three categories of abandoned shipwrecks: abandoned shipwrecks embedded in a State's submerged lands; abandoned shipwrecks embedded in coralline formations protected by a State on its submerged lands; and abandoned shipwrecks located on a State's submerged lands and included in or determined eligible for inclusion in the National Register of Historic Places.

Upon asserting title, the U.S. Government transferred its title to the majority of those shipwrecks to the respective States to manage. The United States retained its title to shipwrecks located in or on public lands while Indian tribes hold title to shipwrecks located in or on Indian lands.

The Act directs the National Park Service to prepare the guidelines being issued herewith to assist the States and Federal agencies in developing legislation and regulations to carry out their responsibilities under the Act. In accordance with the Act, the guidelines are intended to maximize the enhancement of cultural resources; foster a partnership among sport divers, fishermen, archeologists, salvors, and other interests to manage shipwreck

resources of the States and the United States; facilitate access and utilization by recreational interests; and recognize the interests of individuals and groups engaged in shipwreck discovery and salvage.

The "Abandoned Shipwreck Act Guidelines" and the philosophy upon which they are based are the result of three decades of shipwreck management experience within units of the national park system. That experience includes using an interdisciplinary team approach to survey, identify, evaluate, document, interpret, and protect hundreds of shipwrecks located in 59 national park units. It also includes experience conserving, storing, and maintaining artifact and archival collections relating to shipwrecks and other maritime resources. Many of these activities are carried out with the assistance of sport diver and non-diver volunteers and U.S. Department of the Navy dive teams. Some activities are carried out in cooperation with State and foreign governments. This breadth of experience in shipwreck management is reflected in the final "Abandoned Shipwreck Act Guidelines."

The "Guidelines" also reflect many of the comments and suggestions provided by the public, States, Federal agencies, and various interest groups during the course of their development. Sixty-six individuals and organizations provided written comments on the proposed "Abandoned Shipwreck Act Guidelines" (54 FR 13642, April 4, 1989). Over 120 people presented statements at 11 public meetings held during September and October 1988; about 130 people sent letters to express their opinions or that of the organizations or government agencies they represented. In addition, 47 States and territories provided information on their respective shipwreck management programs in effect in mid-1988. All of these comments and suggestions were carefully considered by the National Park Service and, to the extent permissible by law, incorporated into the final "Abandoned Shipwreck Act Guidelines."

The "Abandoned Shipwreck Act Guidelines" provide advice to the States and Federal agencies on how to effectively manage shipwrecks in waters under their ownership or control. The basic components of a shipwreck management program are to:

(a) Locate and identify shipwrecks;

(b) Determine which shipwrecks are abandoned and meet the criteria for assuming title under the Abandoned Shipwreck Act;

(c) Determine which shipwrecks are historic;

(d) Identify recreational and other values that a shipwreck may possess and the shipwreck's current and potential uses;

(e) Provide for the long-term protection of historic shipwrecks;

(f) Protect the rights of owners of non-abandoned shipwrecks;

(g) Consult and maintain a cooperative relationship with the various shipwreck interest groups;

(h) Cooperate with State and Federal agencies and sovereign nations having an interest in shipwreck management;

(i) Provide sport divers with reasonable access to explore shipwrecks;

(j) Provide for public appreciation, understanding, and enjoyment of shipwrecks and maritime history;

(k) Conduct archaeological research on shipwrecks where research will yield information important to understanding the past;

(l) Provide for private sector participation in shipwreck research projects; and

(m) Provide for commercial salvage and other private sector recovery of shipwrecks when such activities are in the public interest.

The "Guidelines" provide advice on how to accomplish the basic components of shipwreck management. However, it is expected that the level of activity under each component (and the specific methods used to accomplish each component) will vary from State to State and from Federal agency to Federal agency. Primary factors influencing how activities under each component are undertaken would include, but not be limited to, the number and nature of shipwrecks under the State or Federal agency's ownership or control, the type and amount of current and potential future uses (like recreational, commercial, and scholarly uses), the type and amount of current and potential future impacts, the availability of monetary and staffing resources, and the applicability of other related statutes and regulations.

The "Abandoned Shipwreck Act Guidelines" are divided into four parts. Part I contains definitions of key terms used in the Act and the "Guidelines." Part II contains guidelines for the management of shipwrecks under State and Federal agency ownership or control. Part III contains the Abandoned Shipwreck Act as passed by the U.S. Congress and signed by the President. Part IV lists the shipwrecks that currently are listed in or are determined eligible for listing in the National Register of Historic Places.

States and Federal agencies should note that the "Abandoned Shipwreck Act Guidelines" are advisory and, therefore, non-binding.[1] States and Federal agencies are encouraged to use the "Abandoned Shipwreck Act Guidelines" and other applicable standards and guidelines to establish, review, revise, and implement programs to manage shipwrecks under their ownership or control. States and Federal agencies are free to adopt the "Abandoned Shipwreck Act Guidelines" in their entirety, make changes to accommodate the diverse and sometimes unique needs of each State or Federal agency, reject parts as inapplicable, or use alternative approaches.

However, it is clear from the legislative history that the U.S. Congress intends for State shipwreck management programs to be consistent with the Abandoned Shipwreck Act and these "Guidelines" and for Federal shipwreck management programs to be consistent with the "Guidelines" to the extent consistent with other applicable Federal law (U.S. House of Representatives Report No. 100–514, Pt. 1, p. 3, and Pt. 2, p. 7).

Part I. Definitions

As used for purposes of these guidelines:

Abandoned shipwreck means any shipwreck to which title voluntarily has been given up by the owner with the intent of never claiming a right or interest in the future and without vesting ownership in any other person. By not taking any action after a wreck incident either to mark and subsequently remove the wrecked vessel and its cargo or to provide legal notice of abandonment to the U.S. Coast Guard and the U.S. Army Corps of Engineers, as is required under provisions in the Rivers and Harbors Act (33 U.S.C. 409), an owner shows intent to give up title. Such shipwrecks ordinarily are treated as being abandoned after the expiration of 30 days from the sinking.

(a) When the owner of a sunken vessel is paid the full value of the vessel (such as receiving payment from an insurance underwriter) the shipwreck is

[1] Since States may establish shipwreck management programs in offices other than the State's historic preservation office, the "Abandoned Shipwreck Act Guidelines" are not being incorporated into National Park Service Guideline No. 49, "National Register Programs Guideline," which is used to review State historic preservation programs for compliance with the National Historic Preservation Act (16 U.S.C. 470 *et seq.*) and the terms and conditions of Historic Preservation Fund grant awards. Unless statutorily required, no changes will be made to State historic preservation program requirements without prior consultation with the States.

not considered to be abandoned. In such cases, title to the wrecked vessel is passed to the party who paid the owner.

(b) Although a sunken warship or other vessel entitled to sovereign immunity often appears to have been abandoned by the flag nation, regardless of its location, it remains the property of the nation to which it belonged at the time of sinking unless that nation has taken formal action to abandon it or to transfer title to another party. Any cargo aboard a vessel entitled to sovereign immunity also generally remains the property of the flag nation unless the cargo had earlier been unlawfully captured by that nation. In such a situation, title to the cargo remains in the nation from which it had been captured. Shipwrecks entitled to sovereign immunity are wrecks of warships and other vessels (such as privately owned vessels chartered or otherwise appropriated by a sovereign nation for military purposes) used only on government non-commercial service at the time of sinking. Examples of vessels entitled to sovereign immunity would include, but not be limited to, U.S. battleships and German U-boats from World War II, Confederate gunboats and Union ironclads from the Civil War, and British frigates and Colonial privateers from the Revolutionary War.

Act means the Abandoned Shipwreck Act (43 U.S.C. 2101–2106).

Embedded as defined in the Act means firmly affixed in the submerged lands or in coralline formations such that the use of tools of excavation is required in order to move the bottom sediments to gain access to the shipwreck, its cargo, and any part thereof. Tools of excavation would include, but not be limited to, hydraulic, pneumatic, or mechanical dredges; explosives; propeller wash deflectors; air lifts; blowtorches; induction equipment; chemicals; and mechanical tools used to remove or displace bottom sediments or coralline formations to gain access to shipwrecks.

Historic shipwreck means a shipwreck that is listed in or eligible for listing in the National Register of Historic Places.[2]

Indian lands as defined in the Act has the same meaning given the term in the Archaeological Resources Protection Act (16 U.S.C. 470*bb*), meaning lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or an Indian individual.

Indian tribe as defined in the Act has the same meaning given the term in the Archaeological Resources Protection Act (16 U.S.C. 470*bb*), meaning any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688).

National Register as defined in the Act means the National Register of Historic Places maintained by the Secretary of the Interior under section 101 of the National Historic Preservation Act (16 U.S.C. 470*a*).

Non-historic shipwreck means a shipwreck that is not historic. When a question exists as to the historical significance of a shipwreck that is not listed in or determined eligible for the National Register of Historic Places, any person may make a request to the Secretary of the Interior for a written determination of the shipwreck's eligibility for inclusion in the National Register.[3]

Public lands as defined in the Act has the same meaning given the term in the Archaeological Resource Protection Act (16 U.S.C. 470*bb*), meaning:

(a) Lands that are owned and administered by the United States as part of the national park system, the national wildlife refuge system, or the national forest system; and

(b) All other lands the fee title to which is held by the United States, except lands on the outer continental shelf, lands under the jurisdiction of the Smithsonian Institution, and Indian lands.

Shipwreck as defined in the Act means a vessel or wreck, its cargo, and other contents. The vessel or wreck may be intact or broken into pieces scattered on or embedded in the submerged lands or in coralline formations. A vessel or wreck includes, but is not limited to, its hull, apparel, armaments, cargo, and other contents. Isolated artifacts and materials not in association with a wrecked vessel, whether intact or broken and scattered or embedded, do not fit the definition of a shipwreck.

State as defined in the Act means a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands.

Submerged lands as defined in the Act means the lands that are "lands beneath navigable waters," as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301); lands of Puerto Rico, as described in section 8 of the Act of March 2, 1917, as amended (48 U.S.C. 749); lands of Guam, the Virgin Islands and American Samoa, as described in section 1 of Public Law 93–435 (48 U.S.C. 1705); and lands of the Commonwealth of the Northern Mariana Islands, as described in section 801 of Public Law 94–241 (48 U.S.C. 1681).

(a) Under the Submerged Lands Act, "lands beneath navigable waters" means:

(1) Lands covered by nontidal waters that were navigable at the time the State either became a member of the Union or acquired sovereignty over the lands and waters;

(2) Lands permanently or periodically covered by tidal waters from the mean high tide line seaward to a line three geographical miles from the coastline (except for the Gulf of Mexico where it extends three marine leagues); and

(3) Filled in, made, or reclaimed lands that formerly were defined as lands beneath navigable waters.

(b) Notwithstanding the special rights of Texas, Florida, and Puerto Rico in regard to submerged lands seaward to a line three marine leagues from the coastline, under the Abandoned Shipwreck Act, the United States asserts sovereignty and title only to qualifying abandoned shipwrecks located within, but not beyond, three geographical miles from the coastline. The Committee on Merchant Marine and Fisheries has stated that Texas, Florida, and Puerto Rico are to exercise jurisdiction over abandoned shipwrecks beyond three geographical miles, but within three marine leagues, from the coastline in a manner consistent with international law principles (U.S. House of Representatives Report No. 100–514, Pt. 2, p. 5).

(c) Examples of submerged lands to which the Abandoned Shipwreck Act applies would include, but not be limited to, the bottomlands of navigable inland waters (such as rivers and lakes), tidal and offshore marine waters (such as

[2] Under the Abandoned Shipwreck Act, in order for the United States to assert title to any abandoned shipwreck, the shipwreck must be listed in or determined eligible by the Secretary of the Interior for listing in the National Register.

[3] Procedures for requesting determinations of eligibility are contained in regulations at 36 CFR part 63. Criteria for evaluation are found in regulations at 36 CFR part 60. National Register Bulletin No. 16, entitled "Guidelines for Completing National Register of Historic Places Forms," and National Register Bulletin No. 20, entitled "Nominating Historic Vessels and Shipwrecks to the National Register of Historic Places," provide advice on preparing National Register forms. Copies of the regulations and bulletins may be obtained by writing to the National Register of Historic Places, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127.

sounds, bays, and gulfs) seaward to a line three geographical miles from the coastline, and lands that formerly were navigable but have since been filled in, made or reclaimed (such as former river beds where courses have meandered or been filled in and former harbor areas that have been reclaimed to create non-submerged land). However, abandoned shipwrecks embedded in formerly submerged lands would, under common law, belong to the owner of the land.

Part II. Guidelines

A. Establishing State Shipwreck Management Programs

Almost every State, including landlocked ones with navigable rivers and lakes, contains shipwrecks in or on its submerged lands. Under the Act, the respective States now clearly hold title to and are responsible for managing a large number of previously abandoned shipwrecks located in state waters. The Act encourages the States to carry out their responsibilities under the Act in a manner that protects natural resources and habitat areas, guarantees recreational exploration of shipwreck sites, and allows for appropriate public and private sector recovery of shipwrecks consistent with the protection of the site's historical values and environmental integrity.

Many States have not yet established programs to carry out the responsibilities they acquired under the Act. The following guidelines are offered to assist those States in developing legislation and promulgating regulations that authorize the establishment of programs to manage State-owned shipwrecks. Many other States have established shipwreck management programs, some of which have been in operation since the 1970's. The following guidelines are offered to assist those States in reviewing and making any necessary amendments to their respective program's authorizing legislation or implementing regulations to assure that the responsibilities they acquired under the Act are fully accommodated.

Guideline 1: Involve interest groups in shipwreck program development and management activities. States should cooperate with, meet with, consult, seek comments from, request assistance from, and otherwise involve in an ongoing basis interested persons and groups in the establishment, review, revision, and implementation of legislation, regulations, policies, and procedures on the management of State-owned shipwrecks. Interested persons and groups would include, but not be limited to, sport divers, dive clubs, diving instructors, dive boat operators, dive shops, commercial and recreational fishermen, marina operators, underwater archeologists, maritime historians, nautical conservators, maritime museums, historic preservationists, commercial salvors, and marine biologists. In addition, State and Federal agencies that have related or overlapping program responsibilities or interests should be involved. Such agencies would include, but not be limited to, those responsible for parks, preserves, sanctuaries, wetlands, refuges, marine life, coastal zone management, navigation, harbors, ports, recreation, tourism, museums, submerged lands, natural resources, cultural resources, historic preservation, fishing, and law enforcement.

Guideline 2: Establish a shipwreck advisory board. A state shipwreck advisory board should be established to promote and foster a direct and ongoing cooperative partnership among the various interest groups to manage State-owned shipwrecks. As appropriate to the needs of each State, the shipwreck advisory board should consist of private citizens who represent the major fields of interest and government officials who represent applicable State and Federal agencies. The major fields of interest would include, but not be limited to, sport diving and instruction; dive boat and marina operations; commercial and recreational fishing; commercial salvage of shipwrecks; underwater archeology, maritime history, historic preservation, curation, and nautical conservation; and marine biology. Duties of the State shipwreck advisory board should include, but not be limited to, the following:

(a) Making recommendations on enactment or amendment of State law that authorizes the establishment of programs to manage State-owned shipwrecks;

(b) Making recommendations on promulgation or amendment of State shipwreck management program regulations, policies, and procedures;

(c) Providing advice on the protection of natural resources and habitat areas near State-owned shipwrecks;

(d) Providing advice on what constitutes reasonable public access to State-owned shipwrecks and how the State should guarantee recreational exploration of its shipwrecks;

(e) Providing advice on what constitutes appropriate public and private sector recovery of State-owned shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites;

(f) Reviewing and making recommendations on applications for proposed public and private sector recovery projects;

(g) Making recommendations on the creation of underwater parks or preserves that provide additional protection for State-owned shipwrecks; and

(h) Periodically reviewing, evaluating, and making recommendations for improvement of State shipwreck management program operations.

Guideline 3: Assign responsibility for State-owned shipwrecks to appropriate agencies. It would be desirable to assign responsibility for State-owned shipwrecks to a single agency. However, it often is not practical to do so since States have well established organizational structures where different State agencies have responsibilities for submerged lands and resources, the coastal zone, historic sites, parks, museums, and historic preservation matters. In addition, a single agency is unlikely to have available to it the full range of expertise that would be necessary to manage State-owned shipwrecks as multiple-use resources. Thus, it is recommended that:

(a) An agency experienced in the management of submerged lands and resources of the coastal zone should be responsible for the general management of an oversight over State-owned shipwrecks;

(b) An agency experienced in recreational resource management and historic site management (such as the State's park authority) should be responsible for the day to day management and protection of shipwrecks located in State underwater parks or preserves; and

(c) An agency experienced in historic preservation matters (such as the State's historic preservation office or underwater archeology office) should have jurisdiction over State-owned historic shipwrecks. That agency should have review and approval authority over all applications to disturb or remove artifacts or materials from historic shipwreck sites. In addition, that agency should be responsible for the development and implementation of a long-term plan to survey, identify, document, evaluate, study, interpret, protect, and preserve State-owned historic shipwrecks located in State waters.

Guideline 4: Establish regulations, policies, or procedures for the long-term management of State-owned shipwrecks. Consistent with the Act and the "Abandoned Shipwreck Act

Guidelines," regulations, policies, or procedures should be established that:

(a) Provide for the survey, identification, documentation, and evaluation of State-owned shipwrecks;

(b) Provide for the study, interpretation, protection, and preservation of State-owned historic shipwrecks;

(c) Provide additional protection to State-owned shipwrecks through the creation of underwater parks or preserves;

(d) Protect natural resources and habitat areas near State-owned shipwrecks;

(e) Guarantee sport divers recreational exploration of State-owned shipwrecks and provide reasonable public access to State-owned shipwrecks; and

(f) Allow for appropriate public and private sector recovery of State-owned shipwrecks consistent with the protection of historical values and environmental integrity of the sites.

Guideline 5: Provide adequate staff, facilities, and equipment. The agencies responsible for the management of State-owned shipwrecks should have (or have access to) adequate professional staff, office and laboratory facilities, vessels, and diving and underwater survey equipment to carry out assigned responsibilities. The number and occupations of staff and kinds of facilities, vessels, and equipment deemed to be adequate will vary according to the needs and goals of each State. To help determine appropriate staffing and funding levels, States may want to ask themselves the following questions:

(a) How many historic and non-historic shipwrecks are known to be present in State waters? How many are estimated to exist?

(b) How does the State conduct surveys or excavations to identify, evaluate, document, or recover shipwreck sites? Does the State use its own staff underwater archeologists, maritime historians, and marine surveyors, and use its own vessels, equipment, and facilities? Does the State award contracts or issue permits to private parties? Does the State coordinate, oversee, and work with volunteers? Does the State rely on sport divers, commercial salvors, commercial fishermen, marine surveyors, researchers, and other parties to report finds that then are examined by the State's professional staff? Does the State plan to change the way it conducts surveys or excavations?

(c) How does the State store, maintain, conserve, study, exhibit, and interpret artifacts and materials recovered from shipwreck sites? Does the State use its own staff curators, nautical conservators, researchers, and exhibit specialists, and use its own equipment, conservation laboratory, and repository? Does the State award contracts or issue permits to private parties? Does the State loan or give items to sport diver collectors, commercial salvors, researchers, universities, local museums, or other parties? Does the State plan to change the way it carries out these activities?

(d) What kinds of interpretive, publication, and general public awareness programs does the State currently have? What kinds are planned?

(e) What is the amount of sport diving activity at shipwreck sites in State waters? Does the State Currently facilitate recreational sport diving activities? Does the State intend to promote such activities?

(f) How many underwater parks or preserves currently exist? Are they operated by the State or by Federal agencies under agreements with the State? How many underwater parks or preserves are planned? Will the State manage them? What recreational and interpretive facilities currently are available? Does the State intend to develop any such facilities?

(g) What is the amount of scholarly research activity at shipwreck sites in State waters? Does the State currently regulate such activity? If not, does the State intend to regulate scholarly research activities?

(h) What is the amount of commercial salvage activity at shipwreck sites in State waters? Does the State currently regulate such activity? If not, does the State intend to regulate commercial salvage activities?

Guideline 6: Cooperate and consult with State and Federal agencies. For a State shipwreck management program to be effective, the agencies assigned management responsibility for State-owned shipwrecks should cooperate and consult, on a routine basis, with other State and Federal agencies that have related or overlapping responsibilities. State and Federal agencies that should be consulted, and the primary purposes for the contract, would include, but not be limited to, the:

(a) State's historic preservation office and underwater archeology office (or archeology office, in the absence of an underwater archeology office) about the:

(1) Identification, documentation, evaluation, protection, and preservation of State-owned historic shipwrecks;

(2) Nomination of historically significant shipwrecks to the National Register; and

(3) Award of Historic Preservation Fund grants for the study, interpretation, protection, and preservation of historic shipwrecks and properties;

(b) State's museum about the storage, maintenance, conservation, exhibition, interpretation, and study of artifacts and other materials recovered from State-owned shipwrecks;

(c) State's park authority about the:

(1) Creation and operation of State underwater parks or preserves;

(2) Facilitation of sport diver access to State-owned shipwreck sites; and

(3) Development of interpretive, recreational, and public awareness programs about the State's maritime heritage and shipwreck sites;

(d) State's submerged lands, natural resources, wetlands, and marine fisheries agencies about the protection of natural resources and habitat areas near shipwreck sites, particularly coralline formations protected by the State on its submerged lands;

(e) State's coastal zone management office about the:

(1) Incorporation of enforceable shipwreck management regulations, policies and procedures into the State's federally approved coastal zone management program;

(2) Inventory and designation of geographic areas of particular concern that contain historic shipwrecks, such areas being designated in accordance with the State's federally approved coastal zone management program and section 306 of the Coastal Zone Management Act (16 U.S.C. 1455);

(3) Coordination of any necessary Federal consistency determinations required in accordance with the State's federally approved coastal zone management program and section 307 of the Coastal Zone Management Act (16 U.S.C. 1456); and

(4) Award of Coastal Zone Management grants under sections 306, 306A, and 309 of the Coastal Zone Management Act (16 U.S.C. 1455, 1455*a*, and 1456*b*) for State shipwreck management program development, implementation, and related activities;

(f) State's law enforcement agency attorney general's office about the protection of State-owned shipwrecks and the prosecution of persons who willfully damage or vandalize State-owned shipwrecks or otherwise willfully violate the State's shipwreck management program;

(g) U.S. Army Corps of Engineers and the U.S. Coast Guard about:

(1) Legal notice of abandonment of wrecked vessels that may have been provided pursuant to the Rivers and Harbors Act (33 U.S.C. 409);

(2) Evidence of prior dredging, filling, and channel modification that may have damaged or destroyed shipwrecks;

(3) Measures to ensure that survey, inventory, documentation, recovery, and protection activities at State-owned shipwrecks do not pose a hazard to navigation; and

(4) Prompt removal, by the responsible party or Federal agency, of modern sunken vessels that pose a hazard to navigation;

(h) Advisory Council on Historic Preservation and appropriate Federal agencies about coordination of any necessary compliance with sections 106 or 110(f) of the National Historic Preservation Act (16 U.S.C. 470*f* and 470*h*–2) related to a Federal, federally assisted, or federally licensed undertaking in State waters that may have an effect on historic shipwrecks or on shipwrecks that are National Historic Landmarks;

(i) National Oceanic and Atmospheric Administration, U.S. Department of Commerce, about the designation of national marine sanctuaries in State waters and about the management of historic and non-historic shipwrecks, other historic properties, natural resources, and habitat areas in or on a State's submerged lands located within national marine sanctuaries;

(j) National Park Service, U.S. Department of the Interior, about the creation of national park units in State waters and about the management of historic and non-historic shipwrecks, other historic properties, natural resources, and habitat areas in or on a State's submerged lands located within units of the national park system;

(k) Office of the Judge Advocate General, U.S. Department of the Navy, and the General Services Administration about the ownership and protection of sunken U.S. and Confederate warships and other vessels entitled to U.S. sovereignty located in or on a State's submerged lands; and

(l) Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, about the ownership and protection of sunken foreign flag warships and other foreign flag vessels entitled to sovereign immunity located in or on a State's submerged lands.

Guideline 7: Establish a consultation procedure to comment on State and Federal activities that may adversely affect State-owned shipwrecks. State and Federal agencies whose activities may disturb, alter, damage, or destroy State-owned shipwrecks should be required, prior to approving the activity, to take into account the effect of the proposed activity on any State-owned shipwreck and to afford the State agencies assigned management responsibility for State-owned shipwrecks a reasonable opportunity to comment on the proposed activity.

(a) When the State's shipwreck management program has been incorporated into the State's historic preservation program, the consultations conducted under sections 106 and 110(f) of the National Historic Preservation Act (16 U.S.C. 470*f* and 470*h*–2) should be used to comment on proposed Federal activities that may affect State-owned historic shipwrecks.

(b) When the State's shipwreck management program has been incorporated into the State's federally approved coastal zone management program, the Federal consistency reviews conducted under section 307 of the Coastal Zone Management Act (16 U.S.C. 1456) should be used to comment on proposed Federal activities that may affect State-owned shipwrecks located within the coastal zone.

(c) When State-owned shipwrecks that may be affected are historic, the comments of the State's historic preservation office and the underwater archeology office (or archeology office, in the absence of an underwater archeology office) should be obtained.

Guideline 8: Use the National Register of Historic Places criteria. Section 6(a)(3) of the Act requires that any abandoned shipwreck located on—rather than embedded in—a State's submerged lands must be listed in or determined eligible for listing in the National Register of Historic Places in order for the United States to assert title to it. The Act does not require that any abandoned shipwreck embedded either in the seabed or in coralline formations protected by a State be so listed or determined eligible in order for the United States to assert title to it. Nevertheless, it is recommended that, in the management of State-owned shipwrecks, the historical significance of all shipwrecks be determined using the National Register's eligibility criteria, which appear in regulations at 36 CFR part 60.

Guideline 9: Use applicable standards and guidelines. Applicable standards and guidelines should be used in the operation of the State's shipwreck management program. As appropriate, these would include, but not be limited to:

(a) The National Park Service's "Abandoned Shipwreck Act Guidelines" being issued herewith, which provide advice on funding shipwreck programs and projects, surveying and identifying shipwrecks, documenting and evaluating shipwrecks, providing for public and private sector recovery of shipwrecks, providing public access to shipwrecks, interpreting shipwreck sites, establishing volunteer programs, and creating and operating underwater parks or preserves;

(b) The "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716; Sept. 29, 1983), which provide advice on planning, survey, evaluation, registration, preservation, and documentation of historic properties;

(c) The National Park Service's "Guidelines for Recording Historic Ships" (September 1988), which provide advice on preparing measured drawings and photographs of historic ships as well as of substantially intact hulks for which contemporary documentary sources are available; and

(d) The Secretary of the Interior's "Standards for Historic Vessel Preservation Projects, with Guidelines for Applying the Standards" (May 1990), which provide advice on the treatment, acquisition, protection, stabilization, preservation, rehabilitation, and restoration of historic vessels.

Copies of the above cited documents may be obtained by writing to the National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127.

Guideline 10: Prosecute persons who willfully violate the State's shipwreck management program. Persons who willfully damage or vandalize State-owned shipwrecks or otherwise willfully violate the State's shipwreck management program should be prosecuted in accordance with State laws and regulations governing State-owned property, and where the shipwreck in question is historic, historic property laws and regulations.

(a) Affected interest groups should be provided with information on the State's shipwreck management program; the importance of protecting State-owned shipwrecks; any restrictions, fines, and penalties for willfully violating the program; and an office to contact for further information. At a minimum, information should be distributed to local dive clubs and dive boat operators, posted at marinas and docking facilities, and posted on or near shipwreck sites.

(b) Criminal fines and civil penalties for persons convicted of willfully violating provisions of the State's management shipwreck program should be commensurate with the nature of the violation, increase with subsequent convictions, and include community service in the management of shipwrecks. Third and subsequent

convictions should include confiscation and forfeiture of all equipment and vessels used in the commission of the violation.

(c) Artifacts and other materials recovered illegally from State-owned shipwrecks after enactment of the State's shipwreck statute should be confiscated. When possible, artifacts and materials of historical significance should be conserved and maintained.

(d) Any fines or penalties collected should be used to repair or stabilize damaged shipwreck sites, restore the environment surrounding the sites, conserve and maintain confiscated historically significant artifacts and other materials, further the efforts of shipwreck research and protection, and enhance the public's appreciation of the State's maritime heritage.

Guideline 11: Provide legal recourse for persons affected by the State's shipwreck management program. Any affected person or party who believes a State's shipwreck management program is not consistent with the intent of the Act and the "Abandoned Shipwreck Act Guidelines" should be provided with legal recourse under State law. In particular, any affected person should be provided with an opportunity to appeal decisions by the State to:

(a) Withhold public notice of the locations of shipwrecks to which, under the Act, the State holds title;

(b) Deny a person's request for non-destructive recreational exploration of or public access to State-owned shipwrecks;

(c) Deny a person's request for the recovery of State-owned shipwrecks when the person believes the proposed recovery is consistent with the historical values and environmental integrity of the shipwreck and the site; and

(d) Assess a civil penalty against a person who is convicted of willfully violating the State's shipwreck management program.

Any affected person may appeal a State's evaluation of the historical significance of a shipwreck by requesting from the Secretary of the Interior a written determination of the shipwreck's eligibility for listing in the National Register of Historic Places.

B. Establishing Federal Shipwreck Management Programs

Federal agencies have been responsible for managing and protecting historic properties (including historic shipwrecks) located on public lands since passage of the Antiquities Act (16 U.S.C. 431–433) in 1906. This responsibility was reaffirmed in 1979 with enactment of the Archaeological Resources Protection Act (16 U.S.C. 470*aa–mm*) and expanded upon in 1980 when the National Historic Preservation Act (16 U.S.C. 470 *et seq.*) was amended.

Abandoned shipwrecks located on public lands generally have been treated as Federal property and have been managed according to applicable Federal property, land management, and historic preservation statutes. The Abandoned Shipwreck Act (43 U.S.C. 2101–2106) reaffirms this assertion of U.S. title and management responsibility for abandoned shipwrecks located on public lands. However, the Antiquities Act, the Archaeological Resources Protection Act, and other historic preservation statutes establish more stringent requirements than does the Abandoned Shipwreck Act for managing and protecting federally-owned or controlled historic shipwrecks. Because of these differences, the Committee on Merchant Marine and Fisheries said that "Federal agencies * * * should manage their historic shipwrecks consistent with the (Abandoned Shipwreck Act) guidelines to the extent consistent with other applicable federal law" (U.S. House of Representatives Report No. 100–514, Pt. 2, p. 7).

Under the National Historic Preservation Act, Federal agencies also are responsible for taking into account the effects of their programs and projects on historic properties. Some activities that are undertaken, funded, licensed, or permitted by Federal agencies have the potential to affect historic shipwrecks. Examples of such activities would include, but not be limited to, dredging in rivers and harbors, discharging material into a waterway, constructing bridges and harbor facilities, exploring for and developing mineral resources, removing shipwrecks and drift, commercially salvaging shipwrecks, making wildlife habitat improvements, and making shoreline or channel improvements. These kinds of activities are subject to the provisions of sections 106 and 110 of the National Historic Preservation Act (16 U.S.C. 470*f* and 470*h*–2).

In addition, some activities that are directly undertaken, funded, licensed or permitted by Federal agencies have the potential to affect shipwrecks located in the coastal zone. When these activities occur in the coastal zone of a State with a federally approved coastal zone management program, they may be subject to section 307 to the Coastal Zone Management Act (16 U.S.C. 1456).

To fulfill these various statutory requirements, Federal agencies have established programs to survey, identify, document, evaluate, protect, and preserve historic properties that are under their ownership or control or that may be affected by their programs and projects. The following guidelines are offered to assist Federal agencies in reviewing and making any necessary changes to these programs to ensure that shipwrecks under their ownership or control are properly managed and protected and to ensure that the effects of their projects and programs on historic shipwrecks are taken into account prior to project or program approval.

Guideline 1: Manage historic shipwrecks in accordance with section 110 of the National Historic Preservation Act. In accordance with section 110 of the National Historic Preservation Act (16 U.S.C. 470*h*–2), when a Federal agency owns or controls submerged lands, the agency must:

(a) Assume responsibility for the preservation of historic shipwrecks sites located on federally-owned or controlled submerged lands;

(b) To the maximum extent feasible, use historic shipwreck sites under its ownership or control for agency purposes (such as studying and interpreting the sites for the public);

(c) In accordance with appropriate professional standards, take steps to preserve historic shipwreck sites under its ownership or control (such as stabilizing and preserving historic shipwrecks in place, or recording and recovering sites when preservation in place is not feasible);

(d) In cooperation with the State's historic preservation office, establish programs to locate, inventory, and nominate historic shipwrecks under its ownership or control for inclusion in the National Register of Historic Places. The State's underwater archeology office (or archeology office, in the absence of an underwater archeology office) also should be consulted about the survey, identification, documentation, and evaluation of historic shipwrecks;

(e) Exercise caution to ensure that historic shipwreck sites under its ownership or control are not inadvertently transferred, sold, destroyed, substantially altered, or allowed to deteriorate significantly;

(f) When a Federal or federally assisted undertaking will destroy or substantially alter an historic shipwreck site, ensure that appropriate records are made of the site and deposited in the Library of Congress or other institution designated by the Secretary of the Interior. The level of recordation should be agreed upon by the Federal agency, the State's historic preservation office, and the Advisory Council on Historic Preservation as a part of the consultation process under section 106

of the National Historic Preservation Act (16 U.S.C. 470*f*); and

(g) When a Federal undertaking will directly and adversely affect an historic shipwreck designated as a National Historic Landmark, to the maximum extent feasible, take steps to minimize harm to the landmark and afford the Advisory Council on Historic Preservation an opportunity to comment on the undertaking. The Advisory Council on Historic Preservation's regulations (36 CFR part 800) set forth procedures for Federal agencies to fulfill this requirement.

Guideline 2: Issue archeological permits for the recovery of historic shipwrecks in accordance with the Archaeological Resources Protection Act. Requests for the archeological recovery of historic shipwrecks located on public and Indian lands must be reviewed and approved or denied by Federal land managers in accordance with the permitting requirements set forth in the Archaeological Resources Protection Act (16 U.S.C. 470*aa–mm*), its implementing regulations (43 CFR part 7; 36 CFR part 296; 18 CFR part 1312; 32 CFR part 229), and any other agency specific statutes and regulations. Federal land managers generally issue permits for the excavation or removal of archeological resources (including historic shipwrecks) when the following conditions are met:

(a) The permit applicant is qualified to carry out the activity, meaning that the person has:

(1) A graduate degree in anthropology or archeology, or equivalent training and experience;

(2) Demonstrated the ability to plan, equip, staff, organize, and supervise the type and scope of the proposed activity;

(3) Demonstrated the ability to carry research to completion, as evidenced by timely completion of theses, research reports, or similar documents;

(4) Completed at least 16 months of professional experience and/or specialized training in archeological field, laboratory, or library research, administration, or management, including at least 4 months experience and/or specialized training in the kind of activity being proposed; and

(5) Completed at least 12 months of experience in research concerning archeological resources of the pertinent prehistoric or historic period, meaning that applicants proposing to study historic shipwrecks should have one year of experience in historic shipwreck research;

(b) The proposed activity is for the purpose of furthering archeological knowledge in the public interest;

(c) For an activity proposed on public lands, the artifacts and material remains that are recovered from the shipwreck site will remain the property of the United States, and the artifacts, material remains and copies of associated records will be preserved in a suitable repository in accordance with regulations found at 36 CFR part 79;

(d) For an activity proposed on Indian lands, the Indian landowner and Indian tribe having jurisdiction have consented to the proposed activity and, unless the Indian owner retains custody of the artifacts and material remains, the artifacts, material remains and copies of associated records will be preserved in a suitable repository in accordance with regulations found at 36 CFR part 79;

(e) The proposed activity is fully consistent with any management plan applicable to the submerged lands under the agency's jurisdiction; and

(f) For an activity proposed on public lands at a site that may be of Indian tribal religious or cultural importance, the Federal land manager has notified the appropriate Indian tribe.

Guideline 3: Issue contracts for the preservation, sale, or collection of wrecked, abandoned, or derelict shipwrecks in accordance with Federal property statutes. Requests to search for and preserve, sell, or collect any shipwreck that may have been wrecked, abandoned, or become derelict on public lands must be reviewed and approved or denied in accordance with section 310 of title 40 of the U.S. Code and implementing procedures established by the General Services Administration. The General Services Administration generally issues contracts for the preservation, sale, or collection of property (or related proceeds) that may have been wrecked, abandoned, or become derelict on public lands when the following conditions are met:

(a) The applicant pays a nonrefundable service charge of $500 to cover the U.S. Government's administrative costs for processing the contract;

(b) The contract will result in no cost or expense to the U.S. Government, meaning that the contractor agrees to reimburse the U.S. Government for all expenses it may incur in connection with the search and posts a bond to cover any costs that the Federal land manager may incur related to the search;

(c) The Federal land manager gives permission;

(d) The Federal land manager determines that the property that is the object of the search is not of "archeological interest," as defined under the Archaeological Resources Protection Act (16 U.S.C. 470*bb*);

(e) The contract is in compliance with sections 106 and 110 of the National Historic Preservation Act (16 U.S.C. 470*f* and 470*h*–2), the Antiquities Act (16 U.S.C. 431–433), the Archaeological Resources Protection Act (16 U.S.C. 470*aa–mm*), the Archeological and Historic Preservation Act (16 U.S.C. 469–469*c*), and any other Federal statutes governing the management of the area to be searched;

(f) The Federal land manager agrees to provide security and protective custody for any property recovered;

(g) The U.S. Government retains any artifacts or other items recovered that it determines are an archeological resource;

(h) The gross value of any property recovered, exclusive of any portion that is determined to be an archeological resource, is shared on a 50–50 basis between the U.S. Government and the parties to the contract, but only after the U.S. Government determines the property's nature, value, and any rights of third parties; and

(i) Any other requirements that the General Services Administration or the Federal land manager may deem to be in the best interests of the Federal Government.

Persons interested in searching for shipwrecks that may have been wrecked, abandoned, or become derelict on public lands should contact the Property Management Division of the Federal Supply Service in the General Services Administration, Washington, DC 20406 and the applicable Federal land manager for further information.

Guideline 4: Consider the effects of proposed undertakings on historic shipwrecks in accordance with section 106 of the National Historic Preservation Act. In accordance with section 106 of the National Historic Preservation Act (16 U.S.C. 470*f*), Federal agencies must take into account the effect of any proposed Federal, federally assisted, or federally licensed undertaking on any shipwreck that is included in or eligible for inclusion in the National Register of Historic Places. In addition, agencies must afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the proposed undertaking. Agencies must take these actions prior to approving the expenditure of any Federal funds or prior to issuing any license, as the case may be. The Advisory Council on Historic Preservation's regulations (36 CFR part 800) set forth procedures for

Federal agencies to fulfill their section 106 responsibilities.

(a) When historic shipwrecks entitled to U.S. sovereignty may be affected, the applicable U.S. Government agency owner (generally the U.S. Department of the Navy for U.S. vessels and the General Services Administration for Confederate vessels) should be afforded the opportunity to be a consulting party during the section 106 consultation process.

(b) When other historic shipwrecks entitled to sovereign immunity may be affected, the Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, should be contacted to secure comments from the applicable flag nation.

(c) When other federally-owned historic shipwrecks or State-owned historic shipwrecks may be affected, the applicable Federal or State agency owner (and manager, if different from the owner) should be afforded the opportunity to be a consulting party during the section 106 consultation process.

(d) When other non-abandoned historic shipwrecks may be affected, the person or party who holds title to the shipwrecks should be afforded the opportunity to be a consulting party during the section 106 process.

(e) During the section 106 consultation process, Federal agencies should contact "interested persons" who, as defined in paragraph 800.2(h) of the Advisory Council on Historic Preservation's regulations (36 CFR part 800), are organizations and individuals concerned with the effects of an undertaking on historic properties. "Interested persons" may have information about the presence of historic shipwrecks within the area of potential impact of the proposed undertaking, information about other non-historical values and current uses of those shipwrecks, and information about possible effects that the proposed undertaking may have on the sites. "Interested persons" would include, but not be limited to:

(1) Federal, State, regional, and local governmental agencies, Indian tribes, and private landowners who control or have jurisdiction over the submerged lands or adjacent lands to be affected;

(2) Sport divers, dive boat operators, commercial and recreational fishermen, and commercial salvors who are interested in shipwrecks in the area of potential impact;

(3) Underwater archeologists, maritime historians, maritime curators, and nautical conservators who are interested in historic shipwrecks in the area of potential impact; and

(4) Archeological, historical, and maritime societies, museums, and other organizations that are interested in historic shipwrecks in the area of potential impact.

Guideline 5: Conduct activities affecting shipwrecks located in the coastal zone in accordance with section 307 of the Coastal Zone Management Act. Direct Federal and federally funded, licensed and permitted activities affecting shipwrecks located in the coastal zone may be subject to Federal consistency reviews conducted in accordance with section 307 of the Coastal Zone Management Act (16 U.S.C. 1456) and its implementing regulations (15 CFR part 930). Federal agencies whose activities may affect shipwrecks located in the coastal zone should consult and cooperate with the State's coastal zone management office about any necessary compliance with this requirement prior to approving the expenditure of any Federal funds or prior to issuing any license or permit, as the case may be. Federally funded, licensed and permitted activities subject to this requirement must be in compliance with the State's federally approved coastal zone management program, including any enforceable shipwreck management laws, regulations, policies, and procedures that have been incorporated into that program. Direct Federal activities must be conducted, to the maximum extent practicable, in a manner consistent with the State's federally approved coastal zone management program.

Guideline 6: Use applicable Federal standards and guidelines. Applicable Federal standards and guidelines should be used by Federal agencies in the management of shipwrecks under their ownership or control. As appropriate, these would include, but not be limited to:

(a) The National Park Service's "Abandoned Shipwreck Act Guidelines" being issued herewith, particularly sections that provide advice on funding shipwreck programs and projects, surveying and identifying shipwrecks, documenting and evaluating shipwrecks, providing public access to shipwrecks, interpreting shipwreck sites, and establishing volunteer programs;

(b) The "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716; Sept. 29, 1983), which provide advice on planning, surveying, evaluation, registration, preservation, and documentation of historic properties;

(c) The National Park Service's "Guidelines for Federal Agency Responsibilities Under Section 110 of the National Historic Preservation Act" (53 FR 4727; Feb. 17, 1988), which are designed to assist Federal agencies in complying with their responsibilities under section 110 of that Act;

(d) The National Park Service's "Guidelines for Recording Historic Ships" (Sept. 1988), which provide advice on preparing measured drawings and photographs of historic ships as well as of substantially intact hulks for which contemporary documentary sources are available; and

(e) The Secretary of the Interior's "Standards for Historic Vessel Preservation Projects, with Guidelines for Applying the Standards" (May 1990), which provide advice on the treatment, acquisition, protection, stabilization, preservation, rehabilitation, and restoration of historic vessels.

Guideline 7: Protect shipwrecks in or on a State's submerged lands located in units of the national park system and other federally managed areas. Units of the national park system, the national wildlife refuge system, the national forest system, and the national marine sanctuaries system generally are created either to protect significant cultural, biological, or natural resources or to provide recreational and educational opportunities for the public. While the Federal Government holds fee simple title to most of these areas, some lands are owned by the States. Notwithstanding who holds title to the lands, national parks, national wildlife refuges, national forests, and national marine sanctuaries should be managed in such a manner that the resources they contain (including publicly-owned shipwrecks) are protected and maintained for long-term public use and enjoyment. Where the U.S. Government manages submerged lands of a State located within units of the national park system, the national wildlife refuge system, the national forest system, and the national marine sanctuaries system, the respective Federal land managers and the State should enter into written agreements (or amend existing agreements) for the purpose of specifying how State-owned shipwrecks are to be managed. Agreements should stipulate that the State-owned shipwrecks shall be managed and protected in a manner consistent with how federally-owned shipwrecks are managed and protected. In addition, agreements should specify that souvenir collecting, commercial salvage, treasure hunting, and other damaging activities shall be prohibited at historic shipwrecks.

C. Funding Shipwreck Programs and Projects

Adequate funding is the key to the successful operation of programs for the management of publicly-owned shipwrecks. Without sufficient funding, a State or Federal agency would have difficulty carrying out its responsibilities under the Act and other applicable State and Federal property, land management, and historic preservation statutes and regulations as they relate to shipwrecks. These responsibilities include the survey, identification, documentation, evaluation, and protection of shipwrecks. In addition, it includes the study and preservation of historic shipwrecks and the storage, maintenance, conservation, study, interpretation, and exhibition of artifacts and other materials recovered from historic shipwrecks. It also includes providing public access to shipwrecks for recreational purposes and regulating public and private sector recovery of shipwrecks.

Expenses associated with the management of publicly-owned historic shipwrecks can be exorbitant, particularly costs to conduct scientific research underwater and to maintain and conserve artifacts and materials recovered from an underwater environment. But, the results of research, conservation, interpretation, and exhibition efforts also can generate substantial revenues, sometimes in excess of the costs, primarily through increased tourism.[4]

The following guidelines are offered to assist the States and Federal agencies in securing and allocating funds and in generating revenues to carry out responsibilities to manage publicly-owned shipwrecks under their respective control.

Guideline 1: Fund shipwreck management programs and projects from annual appropriations. State and Federal agency shipwreck management programs should be funded from annual appropriations. Separate appropriation requests should be made to conduct studies at a particular shipwreck site or to study an area for possible designation as an underwater park or preserve. Special studies should be undertaken only when a commitment is made to fund the study to completion. This means that when a special request to excavate a historic shipwreck is approved by a State legislature or the U.S. Congress, sufficient monies should be made available not only for the initial excavation, but also for the subsequent laboratory analysis, conservation treatments, storage and maintenance in an appropriate repository, report preparation, and public interpretation. Because studies of shipwreck sites ordinarily are completed over the course of several years, multiyear budget estimates should be prepared and submitted as part of the initial appropriation request for each project.

Guideline 2: Collaborate with other State and Federal agencies to reduce costs. Where State and Federal agencies own or control contiguous submerged lands, they should enter into written agreements to coordinate their shipwreck management program activities. Jointly conducting archival research and field surveys that are regional in scope and encompass the submerged lands of all of the respective agencies would reduce overall costs, require fewer staff, eliminate duplication of effort, and result in a more complete and extensive assessment of known and potential shipwrecks in the areas studied. Jointly establishing, operating, and using conservation laboratories and repositories would reduce overall costs associated with storing, maintaining, and conserving artifacts and other materials removed from shipwreck sites.

Guideline 3: Fund projects from the Historic Preservation Fund. Section 4(b) of the Act says that funds available to States from historic Preservation (HPF) grants shall be available, in accordance with Title I of the National Historic Preservation Act (16 U.S.C. 470), for the study, interpretation, protection, and preservation of historic shipwrecks and properties. HPF grants to the States are available only after appropriation by the U.S. Congress and thus may or may not be available. When HPF grants are made to the States without restrictions to the contrary, State historic preservation offices should include activities relating to historic shipwrecks within the scope of their program of eligible activities. In particular, historic shipwrecks should be included in the State's inventory of historic properties and the State's comprehensive historic preservation plan. This would enable the State to more effectively identify management needs, set priorities, undertake archival research, survey, identify, document, evaluate, interpret, protect, and preserve historic shipwrecks located in State waters.

Guideline 4: Fund projects using Coastal Zone Management grants. The National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resource Management in the U.S. Department of Commerce has identified sections 306, 306A, and 309 of the Coastal Zone Management Act (16 U.S.C. 1455, 1455*a*, and 1456*b*) as potential funding authorities to assist States in developing and implementing State shipwreck management programs and related activities. Coastal Zone Management (CZM) grants would be available only to those States that have federally approved coastal zone management programs. Subject to annual appropriation by the U.S. Congress, without restrictions to the contrary, CZM grants may be made available through a State's coastal zone management office as follows:

(a) Section 306 CZM grants may be used to assist in the development of State shipwreck management programs. To be eligible for implementation grants under sections 306, 306A, and 309, shipwreck management programs must be incorporated into the State's federally approved coastal zone management program.

(b) Section 306A CZM grants may be used for low cost construction, acquisition or education activities associated with the management of shipwrecks in the coastal zone. To be eligible, projects must meet one of the following objectives:

(1) Preservation or restoration of specific areas that are designated under the State's coastal zone management program because of their conservation, recreational, ecological or esthetic values, or because of their national significance;

(2) Redevelopment of deteriorating and underutilized urban waterfronts and ports that are designated under the State's coastal zone management program as "areas of particular concern;" or

(3) Provide for increased access to public beaches, coastal waters and other coastal areas.

(c) Section 309 CZM grants may be used for projects that address interstate or regional shipwreck management problems and solutions.

CZM grants could be of tremendous value to States as sources of funding for managing State-owned shipwrecks. Specific activities that a State may undertake using CZM grants would include, but not be limited to, designating areas within an underwater park in the coastal zone as "areas of particular concern" because they contain nationally significant historic shipwrecks, rehabilitating piers and replacing pilings to increase public

[4] The best example is in Sweden, where sufficient public and private funds were made available to document, raise, maintain, conserve, interpret, and exhibit the intact 17th century Swedish warship *Vasa*. Revenues generated annually into the Swedish economy by tourists visiting the *Vasa* are said to be $275 million.

access to and recreational use of State-owned shipwrecks, installing bulkheads to increase public safety when accessing shipwrecks, and developing educational and interpretive materials about shipwreck sites in the coastal zone.

Guideline 5: Use other appropriate Federal funding authorities. The National Historic Preservation Act (16 U.S.C. 470 *et seq.*) and the Archeological and Historic Preservation Act (16 U.S.C. 469–469c) identify several methods for Federal agencies to ensure that sufficient monies are available to identify, evaluate, document, and recover data from historic shipwreck sites that may be affected by a Federal undertaking or a federally assisted, licensed or permitted project or program. Those methods include, but are not limited to, the following:

(a) For Federal undertakings, Federal agencies may use appropriated project funds to conduct underwater surveys and recover historic shipwrecks that will be impacted by the proposed undertaking. When estimating a project's costs, costs for surveys and shipwreck identification and evaluation efforts should be included in the project's planning budget while costs for documentation and excavation of sites and costs for conservation and preservation of recovered artifacts, materials, and associated records should be included in the project's mitigation budget;

(b) For Federal projects and programs carried out by a State agency on behalf of the Federal agency, Federal agencies may use appropriated funds to reimburse the State agency for costs incurred conducting preservation activities;

(c) For federally assisted projects, Federal agencies may use appropriated funds to reimburse grantees for costs incurred conducting preservation activities as a part of the grant project; and

(d) For federally licensed or permitted projects, Federal agencies may charge reasonable costs for preservation activities to Federal licensees and permittees as a condition to the issuance of the license or permit.

Guideline 6: Apply for other public and private sector grants. Subject to annual appropriations by the U.S. Congress for such purposes, other public sector grant monies may be available for shipwreck projects. Federal granting agencies that may have funds available for shipwreck projects would include, but not be limited to, the National Science Foundation, the National Endowment for the Humanities, and the National Trust for Historic Preservation. In addition, private foundations, corporations, and businesses may have grant monies available for shipwreck projects; private sector grants often are contingent upon the grantor receiving exclusive media or advertising rights connected with the project.

Guideline 7: Encourage other States, Federal agencies, and nations to co-sponsor shipwreck projects. Another State, Federal agency, or sovereign nation may be interested in co-sponsoring or otherwise participating in projects at shipwrecks to which they have an historical connection. When there is reason to believe that another party may be interested, they should be contacted and encouraged to participate. In addition, prior to conducting any studies of vessels entitled to sovereign immunity, the applicable U.S. Government agency or sovereign nation holding title must be contacted for permission. (Any contact with foreign sovereigns must be via the Bureau of Oceans and International Environmental and Scientific Affairs in the U.S. Department of State.)

Guideline 8: Authorize the acceptance of donations and the ability to enter into cooperative agreements. In order to enable non-government parties to assist in locating, documenting, evaluating, studying, interpreting, and protecting publicly-owned shipwrecks, States and Federal agencies should ensure that they have the authority to:

(a) Accept donations of funds, personal property and services from other parties; and

(b) Enter into cooperative agreements with scientific and educational institutions.

Guideline 9: Encourage volunteers to participate in shipwreck projects. Dive clubs, sport divers, and non-divers should be encouraged to volunteer their skills in shipwreck projects. Project activities often of interest to volunteers are assisting in the conduct of archival research, participating in surveys to locate shipwrecks, verifying remote sensing data that indicates the presence of shipwreck sites and anomalies, participating in test excavations, mapping and photographing shipwreck sites, helping evaluate a shipwreck's multiple values and uses, helping prepare nominations for the National Register, and assisting in the conservation of recovered artifacts. In addition, dive shops, dive boat operators, and other maritime and non-maritime corporations and businesses should be encouraged to donate the use of vessels, supplies, and equipment in shipwreck projects. Where shipwreck projects are funded in part by Federal grants, the monetary value of the volunteered and donated services, vessels, supplies, and equipment may be used under certain Federal grant programs as a match for Federal funds.

Guideline 10: Encourage scientific and educational organizations to participate in shipwreck projects. Universities, colleges, and other scientific and educational organizations that offer avocational or professional underwater archeology courses should be encouraged to participate in shipwreck research projects; such organizations often are willing to participate and use projects as field schools to train students. In addition, universities and colleges that offer professional underwater archeology degree programs should be encouraged to participate in shipwreck projects; students in degree programs often are willing to participate and use projects as research sites for masters theses and doctoral dissertations.

Guideline 11: Require commercial salvors to post performance bonds. Any contracts awarded to commercial salvors for the salvage of shipwrecks should require the salvor to post a performance bond in an amount that would cover costs associated with the activity. The posting of a performance bond should ensure that sufficient funds would be available to complete the salvage activity according to the terms of the contract, should the salvor be unable to do so. The posting of a performance bond would be particularly important where a contract is awarded by a State for the salvage of an historic shipwreck since the costs associated with conserving, maintaining, and storing artifacts and materials recovered from an underwater environment can be high.

D. Surveying and Identifying Shipwrecks

Section 6(b) of the Act requires that adequate notice be given to the public of the location of any shipwreck to which title is asserted under the Act. The purpose of providing public notice is to ensure that sport divers, dive boat operators, commercial and recreational fishermen, operators of trawlers and dredgers, and others know which shipwrecks are historically significant. To comply with this requirement, the States and Federal agencies should actively work to develop a detailed understanding of the number, nature, location, and historical significance of shipwrecks in or on their submerged lands. Such an understanding is possible only through a systematic survey of submerged lands and identification of shipwrecks.

The following guidelines are offered to assist the States and Federal agencies in surveying for and identifying shipwrecks located in or on submerged lands under their ownership or control.

Guideline 1: Prepare an archeological assessment for the survey area. Prior to conducting the field survey, underwater archeologists and maritime historians should assess the potential for and predict the locations of shipwrecks that may be present in the area to be surveyed.

(a) Assessments should be based on available primary and secondary sources about shipwrecks as well as wrecked vessels that were salvaged or refloated. Information about the presence of shipwrecks should be solicited from sport divers, dive clubs, charter boat operators, commercial salvors, fishermen, marine surveyors, local residents, and other knowledgeable individuals. Records of the U.S. Coast Guard and the U.S. Army Corps of Engineers should be examined for evidence of abandoned shipwrecks. Annual reports and records of the U.S. Army Corps of Engineers on ports, harbors, and waterways should be examined for evidence of prior dredging, filling and channel modification that may have damaged or destroyed shipwrecks. Reports (prepared for the Minerals Management Service, U.S. Department of the Interior) about the potential for shipwrecks and other historic properties on the outer continental shelf also should be examined.

(b) Assessments should identify navigational hazards (such as submerged outcrops), climatological factors (such as hurricanes) and historical events (such as naval engagements) that may have caused vessels to founder or wreck. Where individual shipwreck sites are known or suspected, the assessment should summarize the vessel's structural features, the wreck incident, any salvage operations, and any prior archeological surveys or excavations. The approximate or known, verified location of the shipwreck should be plotted on nautical charts to determine areas that should be surveyed.

Guideline 2: Prioritize surveys. Initially, surveys should be focused primarily in areas where shipwrecks are known or expected to be found. In addition, priority should be given to areas subject to high visitor use, dredging, dumping, trawling, development, natural degradation, siltation, and other activities that may damage shipwrecks or make them inaccessible. Once these areas are surveyed, future survey work should be focused in areas known to have been used during periods of exploration and colonization, but where there is little historical documentation about shipwrecks. When the archeological assessment indicates that no shipwrecks are known or expected to have occurred in a given area, the area should be assigned a low priority for survey until new information indicates otherwise.

Guideline 3: Coordinate archival research and field survey efforts with other State and Federal agencies. To the extent possible, archival research and field surveys should be coordinated and conducted jointly with those being undertaken or authorized by other State and Federal agencies that have responsibilities for contiguous submerged lands. At a minimum, the results of archival research and field surveys should be shared with those State and Federal agencies. In addition, archival research and field surveys should be coordinated with and the results provided to the State's historic preservation office and underwater archeology office (or archeology office, in the absence of an underwater archeology office) so that information on historic shipwrecks may be included in the State's inventory of historic properties and the State's comprehensive historic preservation plan.

Guideline 4: Use scientific methods and techniques to conduct field surveys. Field surveys to locate shipwreck sites should employ scientific methods and techniques. Magnetometers, side-scan sonar, subbottom profilers, and remotely operated vehicles often can provide cost effective coverage for deep water sites. Surveys should be conducted systematically, with sufficiently close lane spacing to provide accurate, detailed coverage of an area. Surveys should be conducted by a team that includes, at a minimum, persons trained in the conduct of marine surveys, the use of remote sensing equipment, and the examination and analysis of remote sensing readings for the purpose of identifying shipwrecks. All tapes, equipment readings, field notebooks, and logs generated during surveys should be collated and archivally saved for future study. Reports should be prepared and published that describe the areas surveyed, survey methods used and the results.

Guideline 5: Record shipwreck locations. Areas surveyed should be recorded using accurate positioning systems to determine wreck locations. The location of each shipwreck located during the survey should be recorded on a map by using a standard coordinate system (such as Universal Transverse Mercator grid, Loran C, latitude and longitude, or compass bearings).

Guideline 6: Ground-truth shipwrecks and anomalies using non-destructive methods. All shipwrecks and unverified located during a remote sensing survey should be ground-truthed through sea-bottom inspection—either by remotely operated vehicle or by divers. Shipwrecks should be examined to determine the nature, extent and integrity of the wrecked vessel, surviving cargo, and associated scattered wreckage, and to locate any visible human remains. Shipwrecks should be examined in as non-destructive and non-disturbing a manner as possible. Determinations of a shipwreck's type, age, condition and, when possible, specific identity should be made without test excavations or removal of artifacts or other materials. When test excavations are necessary or artifacts or other materials must be removed (such as when the shipwreck is embedded or encrusted), the amount to be excavated or removed should be as limited as possible to make evaluations, and be done using archeological methods. This is particularly important in cases where historical value is suspected. Any artifacts or other materials recovered from historic shipwrecks should be conserved by a nautical conservator.

Guideline 7: Provide for the treatment of human remains in shipwrecks. To the extent possible, human remains in shipwreck should be left in place as burials at sea. However, when remains (whether of known or unknown persons and whether intact or decomposed) are being disturbed by unavoidable or uncontrollable human activity, they should be removed and appropriately disposed of. Where the remains are of known individuals, a reasonable effort should be made to contact relatives of the deceased to discuss the removal and disposition of the remains. Until human remains are removed, activities that would disturb them should be prohibited.

Guideline 8: Confirm the abandonment of shipwrecks. When there is reason to believe that a shipwreck may not be abandoned, prior to assuming title or taking any action that would affect the shipwreck, steps should be taken to confirm that the shipwreck is abandoned.

(a) Vessels grounded or sunk in navigable waters of the United States are subject to provisions in the Rivers and Harbors Act of 1899 (33 U.S.C. 409). When a shipwreck is thought to have wrecked after enactment of this statute, the U.S. Coast Guard and the U.S. Army

Corps of Engineers should be contacted to determine if the owner of the wrecked vessel provided legal notice of abandonment in accordance with that Act.

(b) When a shipwreck is thought to be a U.S. or Confederate warship or other vessel entitled to U.S. sovereignty, the Office of the Judge Advocate General, U.S. Department of the Navy, the General Services Administration should be contacted for assistance in determining proper ownership.

(c) When a shipwreck is thought to be a foreign flag warship or other foreign flag vessel entitled to sovereign immunity, the Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, should be contacted for assistance in determining proper ownership. (Under customary international law, any contact with other nations about their sunken warships or other vessels is through the U.S. Department of State.)

(d) When a shipwreck is not abandoned, the title holder should be contacted concerning the management and disposition of the wrecked vessel, its cargo, and other contents.

Guideline 9: Provide adequate public notice of the locations of shipwreck sites. The Act requires that the public be given adequate notice of the location of any shipwreck to which little is asserted under section 6 of the Act. At a minimum, the public should be provided with the names and locations of shipwrecks identified during field surveys as well as information on whether the shipwrecks are historic or non-historic. Appropriate methods of giving public notice would include, but not be limited to, publishing notices in local newspapers, diver publications, and the **Federal Register**; posting notices at marinas and dive shops; marking nautical charts; and placing signs at shipwreck sites. When there is reason to believe that disclosure of the exact location (such as Loran coordinates) of a particular historic shipwreck would lead to vandalism, pilferage, or other damage to the site, locational information of a more general nature should be given for that site. However, under the Act, some locational information must be given. In such situations, the level of specificity of the information given should be determined on a case by case basis and should reduce the likelihood of the anticipated damage to the particular historic shipwreck. To withhold from the public even general locational information on shipwrecks would be inconsistent with the Act and the "Abandoned Shipwreck Act Guidelines."

E. Documenting and Evaluating Shipwrecks

Documenting a shipwreck (whether it is historic or non-historic) provides important baseline information for long-term management of the site. Once a shipwreck has been documented, it is then possible to assess changes to it and the surrounding area over time. These changes may result from siltation, water currents, water pollution, dredging, trawling, anchor damage, vandalism, or intensive diver use. Over time, where comparing a shipwreck's current condition to the original documentation shows significant deleterious change or damage and it is determined that the shipwreck should be preserved, then steps can be taken to protect the shipwreck from further damage.

Documenting shipwrecks also aids in evaluation and interpretation efforts. Shipwrecks generally have multiple values and uses that must be taken into consideration for management purposes. The various values and uses shipwrecks may have include, but are not limited to:

(a) Historical values associated with shipwrecks that are eligible for listing in the National Register of Historic Places, like being associated with a significant historical event or personage, possessing distinctive characteristics of a particular vessel type, or containing information important in the nation's history;

(b) Recreational and educational values associated with public use and enjoyment of shipwrecks through such activities as scuba diving, snorkeling, spearfishing, underwater photography, visiting maritime museums, and participating in shipwreck research projects;

(c) Tourism and other monetary values associated with public and private profit making through such activities as operating a dive boat company, salvaging shipwrecks or valuable cargoes, being a commercial fisherman, making movies, and publishing popular books;

(d) Biological values associated with habitat areas and coralline formations that develop in and around shipwreck sites; and

(e) Memorial values attached to warships whose wreck events are associated with the deaths of service personnel, even if human remains are no longer present or visible.

The following guidelines are offered to assist the States and Federal agencies in documenting and evaluating shipwrecks—as they are discovered—that are located in or on submerged lands under their ownership or control.

Guideline 1: Make a photographic record of shipwrecks. Where possible, shipwrecks should be photographed using black and white photographic film and color slide film. Photographs of non-embedded shipwrecks should include shots of the wrecked vessel, artifacts, and important features. Embedded shipwrecks should be photographed without removing bottom sediments or encrustations. All photographs should be clearly labeled and, where possible, contain scales and compass points. Where possible, a video survey should be made, particularly of historic shipwrecks. Video surveys should be oriented to a map of the site that shows the passes over and through the shipwreck. Several passes should be made to provide as comprehensive a video tour of the shipwreck as possible. Detailed video footage should be made of noteworthy, fragile or dangerous features. Where possible, video footage should include a scale and an annotated time reference. When the identity of a shipwreck is known, photographs of the wrecked vessel when afloat and of the actual wreck event should be obtained, where they exist.

Guideline 2: Collect and evaluate information about each shipwreck's history, values, and uses. When the identity of a shipwreck is known, archival information should be collected about her construction and use history. Information about a shipwreck's recreational and educational values and uses should be collected from underwater archeologists, maritime historians, maritime museums, maritime historical societies, and historic preservation officials. Information about a shipwreck's recreational and educational values and uses should be sought from dive clubs, sport divers, dive boat operators, recreational fishermen, maritime museums, maritime historical societies, and tourism officials. Information on a shipwreck's tourism and other monetary values should be sought from tourism officials, commercial salvors, commercial fishermen, dive boat operators, dive shops, and marina operators. Information on a shipwreck site's biological values should be collected from marine biologists and fisheries officials. Information about a wrecked warship's memorial values should be sought from the U.S. Department of the Navy and the General Services Administration (for U.S. and Confederate warships) and the U.S. Department of State (for warships belonging to a foreign flag nation). Evaluations of a shipwreck's history, values and uses should be made

available for public review and comment by interested professional, avocational and other interest groups, appropriate State and Federal agencies, and any shipwreck advisory boards.

Guideline 3: Nominate historically significant shipwrecks to historic registers. When a shipwreck appears to be historically significant, sufficient information should be gathered to nominate it to the National Register of Historic Places [5] and any State historic registers. Shipwrecks that possess exceptional value as commemorating or illustrating the history of the United States should be nominated for designation as National Historic Landmarks.[6] Nominations should be subject to professional and public review by the various interest groups prior to submission to the State's historic preservation office or to the National Register.

Guideline 4: Prepare site maps, drawings, and reports of historic shipwrecks. Archeological site maps should be prepared for historic shipwrecks. Drawings should be made of unique, representative or significant features of historic shipwrecks. When measured drawings are made of substantially intact historic shipwrecks and hulks, they should conform, when possible, to the National Park Service's "Guidelines for Recording Historic Ships" (Sept. 1988). Reports should be prepared about historic shipwrecks. Reports should contain information gathered during archival research, field surveys, any archeological excavations, and any other studies. Reports also should contain recommendations about conducting future studies and about managing the historic shipwreck site. State and Federal agencies are encouraged to use the National Park Service's Submerged Cultural Resources Study series as a model for report preparation.[7] Publications in this series also contain examples of archeological site maps and line drawings that resulted from diving surveys at historic shipwrecks in units of the national park system.

Guideline 5: Prepare a shipwreck inventory. An inventory of all known, surveyed shipwreck sites should be prepared and maintained. The shipwreck inventory should contain, but not be limited to, the following information:

(a) Popular name and, when known, the vessel name, if different;

(b) Vessel size, type, and age;

(c) When known, the wreck date and function at the time of the wreck incident;

(d) Location, including whether it is in an underwater park or preserve;

(e) Whether it is intact or broken into scattered pieces;

(f) Whether it is buried or encrusted in coralline formations;

(g) Whether it is listed in or determined eligible for the National Register, or is potentially eligible for listing;

(h) Whether it is listed in a State registry of historic properties; and

(i) Owner and manager, if different.

State and Federal agencies are encouraged to use the National Park Service's National Maritime Initiative Inventory format as a model.[8] Information on historic shipwrecks also should be provided to the State's historic preservation office and underwater archeology office (or archeology office, in the absence of an underwater archeology office) so that it may be incorporated into the State's inventory of historic properties and the State's comprehensive historic preservation plan.

Guideline 6: Maintain documentation on shipwreck sites. Documents such as field notes, historical information, photographs, site maps, drawings, inventory forms, and reports relating to each vessel listed in the shipwreck inventory should be maintained. Documentation for each shipwreck site should remain together and be deposited, when possible, in a central repository that houses similar documentation on other shipwrecks under the State or Federal agency's ownership or control. However, for safety reasons, duplicate copies of documents should be made and retained in separate locations. Maintaining copies of documentation in multiple locations also results in greater accessibility to the information by researchers and other interested parties.

Guideline 7: Make documentation accessible to interested parties. Shipwreck documentation should be made accessible to the public for interpretive and educational purposes. Shipwreck documentation (particularly maps and drawings) and information about dangers associated with specific sites should be published. However, prior to releasing maps and associated documentation that contain the exact location of historic shipwrecks, States and Federal agencies should assess the risk of theft, vandalism, or other damage to the sites. Documents that contain precise locational information for historic shipwrecks should be considered confidential only when there is reason to believe that their disclosure would lead to vandalism, pilferage, or other damage to a particular shipwreck site. In such cases, the precise locational information should be replaced with information of a more general nature so that the documents may be made available to the public.

F. Providing for Public and Private Sector Recovery of Shipwrecks

Section 4(a) of the Act says that the U.S. Congress intends for the States to allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites. Public sector recovery activities would include, but not be limited to, studies and excavations of shipwrecks by the States and Federal agencies for management, scientific or mitigation purposes. Private sector recovery activities would include, but not be limited to, the collection of artifacts and other materials from shipwrecks by sport divers who desire personal souvenirs, the salvage of shipwrecks by commercial salvors and treasure hunters for profit-making purposes, and the study and excavation of shipwrecks by scientific and educational institutions for scientific purposes.

Clearly, public and private sector recovery of shipwrecks may affect historical values of shipwrecks and the environmental integrity of shipwreck sites. Recovering an historic shipwreck in an unscientific manner certainly would destroy the site and the historical information it contains. Recovery it using explosives, dredges or propeller wash deflectors also would destroy the environment surrounding the site. Recovering it scientifically and conserving and maintaining the recovered artifacts, other materials, and associated records would mitigate the loss of the site and would preserve the historical information.

Values other than historic and environmental ones also may be affected by public and private sector

[5] Criteria for evaluation and procedures for nominating historic properties to the National Register are found in regulations at 36 CFR part 60.

[6] Criteria for national significance and procedures for designating National Historic Landmarks are contained in regulations at 36 CFR part 65.

[7] Information on the Submerged Cultural Resources Study series may be obtained by writing to the Submerged Cultural Resources Unit, Southwest Cultural Resources Center, National Park Service, U.S. Department of the Interior, P.O. Box 728, Santa Fe, NM 87504–0728.

[8] Information on the format of the National Maritime Initiative Inventory may be obtained by writing to the National Maritime Initiative, History Division, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127.

recovery activities. For example, stripping a shipwreck valued primarily for recreational purposes of its artifacts and other materials would reduce, if not eliminate, those values. A substantial reduction in sport diver activity at the site could, in turn, have an adverse effect on tourism and coal business (like dive boat operators and marina operators). Destroying a shipwreck site valued for surrounding habitat areas or coralline formations would have an adverse effect on biological values associated with the shipwrecks. This could, in turn, have an adverse effect on commercial and recreational fishing.

Under the Act, the States are entrusted to manage State-owned shipwrecks for the benefit of the public. Since any recovery activity (whether it is public or private) at shipwreck sites has the potential to damage and destroy the site, its various values and uses, and the surrounding environment, it is the responsibility of the States to ensure that any public and private sector recovery of State-owned shipwrecks is in the best interests of the public. The following guidelines are offered to assist the States in ensuring that public and private sector recovery activities are in the public interest.[9]

Guideline 1: Establish policies, criteria and procedures for appropriate public and private sector recovery of State-owned shipwrecks. Interested persons and groups, appropriate State and Federal agencies, and any State shipwreck advisory board should be consulted about the establishment of policies, criteria and procedures that would allow for appropriate public and private sector recovery of State-owned shipwrecks. At a minimum, the State should establish:

(a) Policies that set forth the circumstances under which the various kinds of public and private sector recovery activities at State-owned shipwrecks would and would not be in the public interest;

(b) Procedures for the public and private sector to apply for permits, licenses or contracts to recover State-owned shipwrecks;

(c) Criteria and procedures for the State to evaluate applications for and issue or deny permits, licenses and contracts to recover State-owned shipwrecks;

(1) The State's historic preservation office and underwater archaeology office (or archeology office, in the absence of an underwater archeology office) should review and approve applications for permits, licenses and contracts to recovery any State-owned shipwreck that is (or may be) historic; and

(2) The issuance of any permit, license or contract should be conditioned with appropriate terms and conditions to ensure that the authorized recovery activity is in the public interest;

(d) Procedures for the State to periodically monitor (both on and off-site) permitted, licenses and contracted recovery work to ensure that it is in compliance with any attached terms and conditions;

(1) State officials who monitor permitted, licensed and contracted work should be given the authority to immediately suspend any permit, license or contract that appears not be in compliance with the terms and conditions of the permit, license or contract;

(2) Once work is suspended, work should not resume until the State has conducted a thorough review and notified the permittee, licensee or contractor of its findings; and

(3) Costs incurred by the State to monitor permitted, licensed and contracted work should be paid with State monies and not be reimbursed by the permittee, licensee or contractor; and

(e) Procedures and criteria that provide, as appropriate, for the transfer of title to artifacts and other materials recovered from State-owned shipwrecks by the private sector to private parties.

Guideline 2: Authorize only those recovery activities at State-owned shipwrecks that are in the public interest. Decisions to allow for the recovery of State-owned shipwrecks should be reached on a case by case basis by weighing and balancing the values and uses a particular shipwreck may have, the potential benefits to be derived from the proposed recovery activity, and the potential adverse effects to be caused by the proposed recovery activity. Only those public and private sector recovery activities that are in the best interests of the public should be authorized. To help determine whether a proposed public or private sector recovery activity is in the best interests of the public, the State should consider the following:

(a) Is the subject shipwreck, in fact, State-owned? (The States cannot authorize public or private sector recovery at any shipwreck that is federally-owned, privately-owned, or entitled to sovereign immunity, even though such shipwrecks may lie in State waters.)

(b) What are the shipwreck's current and potential future values and uses? Is the proposed recovery consistent with those values and uses? Will the proposed recovery enhance any of those values and uses? Will it irrevocably damage or destroy any of those values and uses?

(c) Is the shipwreck listed in or determined eligible for inclusion in the National Register of Historic Places? Is it a National Historic Landmark?

(d) Where the shipwreck may be historic, will be the proposed recovery result in a nomination to the Secretary of the Interior to list the shipwreck in the National Register of Historic Places? Will it result in a recommendation to the Secretary of the Interior to designate the shipwreck as a National Historic Landmark?

(e) Where the shipwreck is (or may be) historic:

(1) Have the State's historic preservation office and underwater archeology office (or archeology office, in the absence of an underwater archeology office) been provided with an opportunity to comment on the proposed recovery? Do they approve of the proposal? Have they attached any terms and conditions to ensure that preservation of the shipwreck's historical information?

(2) Is the proposed recovery consistent with the State's comprehensive historic preservation plan?

(3) Will the proposed recovery result in the acquisition of new historical information or verify historical documentation?

(4) Will the proposed recovery be conducted in a professional manner to preserve the shipwreck's historical information? (See Guideline No. 4 in this subpart for a discussion on conducting recovery activities in a professional manner.)

(5) Will the proposed recovery result in the private ownership or sale of any of the artifacts and other materials recovered? If so, will those items be properly conserved and studied and be made available for public exhibition and interpretation?

(f) Is the shipwreck located in a State underwater park or preserve? If so, is the proposed recovery consistent with the unit's management plans?

(g) Is the shipwreck located in or on a State's submerged lands located within a unit of the national park system, the national wildlife refuge system, the

[9] Federal agencies must follow the requirements set forth in the Archaeological Resources Protection Act (16 U.S.C. 470 *aa–mm*), section 310 of title 40 of the U.S. Code, and other applicable statutes and regulations governing public and private recovery of federally-owned and controlled archeological resources and other property (see applicable guidelines contained in subpart B of part II of these "Guidelines").

national forest system, or the national marine sanctuary system? If so, is the proposed recovery consistent with the unit's management plans, the written agreement between the State and the Federal land manager, and applicable Federal statutes, regulations, policies, and standards?

(h) Is the shipwreck located in any other area (like habitat areas or coralline formations) protected under Federal or State statute, order or regulation? If so, is the proposed recovery consistent with the area's management plans and applicable statutes, orders and regulations?

(i) Is the shipwreck currently being damaged or destroyed by natural processes (such as erosion), by an approved State or Federal undertaking (such as dredging or development) or by other human activity (such as anchor damage)? Is it threatened with imminent and unavoidable damage or destruction by such processes, undertakings or activities?

(j) Where the proposed recovery will damage or destroy the environment surrounding the shipwreck, will the area be restored to its original condition?

(k) Will the proposed recovery impede navigation in existing Federal navigation channels?

(l) Has the applicant obtained other necessary State or Federal permits (such as permits to disturb the bottomlands)?

Guideline 3: Protect particular State-owned shipwrecks from commercial salvage, treasure hunting and private collecting activities. Commercial salvage, treasure hunting and personal collecting activities, no matter how they are conditioned and monitored by the State, are conducted for the personal gain of individuals. Shipwrecks that are particularly significant historically or are in protected areas set aside by some formal mechanism should be preserved for the public and generally not be available for commercial salvage, treasure hunting or personal collecting. It is recommended that, at a minimum, any State-owned shipwreck that meets any of the following criteria should not be available for commercial salvage, treasure hunting or personal collecting:

(a) Shipwrecks designated as National Historic Landmarks or, pending a written determination by the Secretary of the Interior, shipwrecks under consideration for designation as National Historic Landmarks;

(b) Shipwrecks located in State underwater parks or preserves;

(c) Shipwrecks located in or on a State's submerged lands located within units of the national park system, the national wildlife refuge system, the national forest system, or the national marine sanctuary system; or

(d) Shipwrecks located in other areas (like habitat areas or coralline formations) protected under Federal or State statute, order or regulation.

Guideline 4: Require any recovery at State-owned historic shipwrecks to be done in a professional manner. The study and recovery of historic shipwrecks enables underwater archeologists and maritime historians to collect new data or confirm archival documentation regarding a specific vessel, a type or method of construction, an historical event or period, or a culture. When it is determined to be in the public interest to authorize the recovery of artifacts or materials from historic shipwrecks, the recovery operation (whether it is public or private) should be done in a manner consistent with the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716; Sept. 29, 1983) and other applicable historic preservation standards and guidelines. At a minimum, any permit, license or contract authorizing the scientific excavation, commercial salvage or treasure hunting of State-owned historic shipwrecks should contain the following terms and conditions:

(a) The permittee, licensee or contractor has secured any other necessary State or Federal permits;

(b) A professional underwater archeologist is in charge of planning, conducting and supervising the field operations, laboratory analysis, and report preparation;

(c) A conservation laboratory is in place prior to commencement of field operations and a professional nautical conservator is in charge of planning, conducting and supervising the conservation of any artifacts and other materials recovered from the site;

(d) Field operations, laboratory analyses, and conservation treatments use appropriate scientific methods and techniques and are as non-destructive and non-disturbing as possible to the site, the surrounding environment, and any artifacts and other materials recovered from the site;

(e) The shipwreck site is fully documented (i.e., an archeological site map is prepared, measured drawings are made of significant features, and a photographic record is made of the wrecked vessel, significant features, and artifacts);

(f) A professional final report is prepared (and approved by the State) that describes the field operations, excavation methods, laboratory analyses, conservation treatments, scientific findings, and recommendations for any future work;

(g) Copies of all field notes, site maps, measured drawings, photographs, videos, final reports, and other data and records derived from the recovery and analysis are deposited, stored and maintained in the repository named in the permit, license or contract;

(h) Copies of final reports, site maps and other appropriate records are provided to the State's historic preservation office and the underwater archeology office (or archeology office, in the absence of an underwater archeology office);

(i) When the State is maintaining ownership to any artifacts or other materials recovered from the site, those items are deposited, stored and maintained in the repository named in the permit, license or contract;

(j) When the State is transferring ownership to any artifacts or other materials recovered from the site to a commercial salvor or treasure hunter:

(1) The transfer is made only after field operations and laboratory analysis are completed, the recovered items are conserved, and the final report is approved by the State; and

(2) To the extent possible, the items transferred are preserved and maintained as an intact collection and are made available for future study, public interpretation and exhibition;

(k) When a commercial salvor or treasure hunter is undertaking the recovery, the salvor or treasure hunter posts a performance bond to cover costs associated with the recovery (this is to ensure that sufficient funds would be available to the State if the salvor or treasure hunter is unable to complete the recovery according to the terms and conditions of the permit, license or contract); and

(l) Information on the recovery activity and the archeological findings are disseminated to the scientific community and to the public.

Guideline 5: Allow public and private recovery activities at non-historic shipwrecks without archeological conditions. When it is determined to be in the public interest to authorize the recovery of artifacts and other materials from State-owned non-historic shipwrecks, the recovery activity should not be conditioned with archeological requirements.

Guideline 6: As appropriate, transfer title to artifacts and other materials recovered from State-owned shipwrecks by the private sector to parties. Artifacts and other materials recovered from State-owned shipwrecks are State property and would be subject to State

statutes and regulations governing the management and disposition of State property. Items recovered from shipwrecks designated as State historic sites also would be subject to State statutes and regulations governing the management of historic sites. When it is determined to be in the public interest to authorize private parties (like sport divers or commercial salvors) to recover and keep artifacts or other materials from State-owned shipwrecks, title to those items should be transferred in accordance with the applicable State property and historic site statutes and regulations. In general, the States should:

(a) Not transfer title to any items to another party until the authorized recovery activity is completed, the items are properly conserved and analyzed, and any required final report is completed and approved by the State;

(b1) Determine any archeological and commercial values of recovered artifacts and other materials;

(c) Determine what would constitute fair compensation to the private party (for his or her recovery efforts) in terms of a share of items recovered, a percentage (in cash) of the fair market value of the items, or a combination thereof; and

(d) Retain title to items that are unique, exceptionally valuable historically or representative of the items recovered, or are recovered illegally after enactment of the State's shipwreck management statute.

Guideline 7: Disseminate information on public and private sector recovery activities to the public and to the scientific community. Information on public and private sector recovery activities and any archeological findings should be disseminated to the public and the scientific community. Appropriate methods to disseminate information to the public would include, but not be limited to, publishing non-technical pamphlets, books, and articles in popular national, regional and specialty magazines; presenting lectures, video tapes and slide shows at local historical society and dive club meetings; developing underwater trails at shipwreck sites; and exhibiting artifacts and other materials in local museums. Appropriate methods to disseminate information to the scientific community would include, but not be limited to, preparing a final report (this always should be done), publishing articles in scientific journals, and presenting papers at professional meetings. Copies of final reports always should be provided to the State's historic preservation office, underwater archeology office (for archeology office, in the absence of an underwater archeology office), and appropriate Federal historic preservation offices so that the data may be incorporated into Federal and State historic preservation plans.

Guideline 8: Discourage the recovery and display of intact shipwrecks. The costs to properly raise, conserve, maintain, and exhibit intact shipwrecks are prohibitively expensive and perpetual. Thus, recovering intact shipwrecks should be discouraged unless they are historic and in danger of imminent and unavoidable destruction, and it is determined to be in the best interests of the public. However, no such shipwreck should be recovered unless sufficient public and/or private funds are made available to document and recover it archeologically and to properly conserve, maintain, exhibit, and interpret it for the public.

G. Providing Public Access to Shipwrecks

Section 4(a) of the Act says that the U.S. Congress intends for the States to provide reasonable access by the public to State-owned shipwrecks and to guarantee recreational exploration of shipwreck sites. Access to publicly-owned shipwrecks (whether federally-owned or State-owned) by the public is beneficial for tourism, public enjoyment and appreciation, and preservation, as well as for recreation. However, increased public access also may cause inadvertent damage to shipwrecks.

The following guidelines are offered to assist the States and Federal agencies in determining what constitutes reasonable public access to shipwrecks under their ownership or control while, at the same time, protecting shipwrecks from inadvertent damage.

Guideline 1: Guarantee recreational exploration of publicly-owned shipwreck sites. At a minimum, any person should be able to freely and without a license or permit dive on, inspect, study, explore, photograph, measure, record, fish at, or otherwise use and enjoy publicly-owned shipwrecks (including historic shipwrecks and shipwrecks whose historical significance has not yet been evaluated) when the use or activity does not involve disturbing or removing parts or portions of the shipwreck or its immediate environment.

Guideline 2: Establish lists of shipwrecks having recreational value. Lists of publicly-owned shipwrecks having recreational value should be prepared in cooperation with sport divers, dive clubs, dive boat operators, recreational fishermen, recreational planners, underwater archeologists, and maritime historians. The lists should note the shipwreck's location (including a chart description and coordinates), depth and general bottom conditions, a general description (including any dangers and the shipwreck's condition and historical significance), and indicate whether a license or permit is needed to collect artifacts or other materials.

Guideline 3: Facilitate public access to shipwrecks. Sport diver access to publicly-owned shipwrecks having recreational value should be facilitated through the placement of marker buoys and anchor moorings and through the distribution of information at dive shops and marinas. Underwater parks or preserves should be created in areas containing shipwrecks that are well preserved and valuable for recreational purposes. Public facilities on and off the shore to support diver access and visitor enjoyment and appreciation should be provided, as appropriate, in underwater parks and preserves.

Guideline 4: Consult with interest groups prior to imposing any restrictions on access. Prior to imposing any restrictions on public access to shipwrecks, comments should be sought from the various interest groups, the State's historic preservation office and underwater archeology office (or archeology office, in the absence of an underwater archeology office), and appropriate State and Federal agencies about the values and uses of individual shipwrecks (or classes of shipwrecks) and the need to regulate access. When shipwrecks entitled to U.S. sovereignty are involved, the applicable U.S. Government agency should be contacted for instructions on regulating public access to the federally-owned shipwrecks. When other shipwrecks entitled to sovereign immunity are involved, the Bureau of Oceans and International Environmental and Scientific Affairs in the U.S. Department of State should be contacted to secure instructions from the applicable flag nation on regulating public access to the foreign-owned shipwrecks.

Guideline 5: Regulate access at few, if any, shipwrecks. Decisions to limit, monitor or prohibit public access to shipwrecks should be made on a case by case basis, be practical, and be fairly administered. In general, public access to shipwrecks in State waters should be regulated only when:

(a) A shipwreck site presents an unacceptable risk to human safety and the visitor does not assume full responsibility for his or her safety;

(b) A shipwreck is extremely fragile and in danger of collapsing;

(c) A shipwreck is suffering extensive deterioration or attrition due to prior unregulated access;

(d) A permittee, licensee or contractor who is recovering a shipwreck under a valid permit, license or contract requests that access be regulated during the term of the permit, license or contract; or

(e) A shipwreck is entitled to sovereign immunity and the applicable Federal Government agency (for U.S. flag vessels) or foreign nation (for foreign flag vessels) provides instructions on regulating public access to the shipwreck. In the absence of specific instruction from the applicable sovereign, under customary international law, access by any U.S. national to shipwrecks entitled to sovereign immunity is prohibited. When a sovereign grants permission, it generally limits access to named individual for specified purposes. As a matter of policy, permission generally is not given to access (or salvage) sunken warships that contain the remains of deceased service personnel or explosive material.

Guideline 6: Provide adequate public notice of restrictions. Once a decision has been made to limit, monitor or prohibit access to a particular shipwreck, the public should be provided adequate notice of the restrictions. Appropriate methods to give public notice would include, but not be limited to, marking restrictions on nautical charts; posting notices on the shipwreck and at marinas and dive shops; notifying dive boat operators; and publishing restrictions in "Notice to Mariners," diver publications and local newspapers. A standard method of giving public notice should be adopted.

H. Interpreting Shipwreck Sites

Section 4(b) of the Act says that funds available to the States from HPF grants shall be available for a variety of activities, including interpretation of historic shipwrecks and properties. Whether using HPF grants, other monies, or working in partnership with the various interest groups, providing for the interpretation of publicly-owned shipwrecks helps increase the public's knowledge and understanding of our nation's maritime history and appreciation for shipwrecks and their preservation. Interpreting sites also is the only means to impart to the public the historic information and archeological discoveries that result from public and private sector shipwreck projects.

The following guidelines are offered to assist the States and Federal agencies in providing for the interpretation of shipwrecks under their ownership or control.

Guideline 1: Present information on the vessel's history and the shipwreck's various values and uses. Interpretive efforts should strive to present to the public information about a vessel's construction, type, characteristics, age, use history, significance in history (such as participation in historical events or associations with significant individuals—like a designer, a builder or a commanding officer), and whether it is unique or representative of a vessel type. In addition, information on a shipwreck's various current and potential future values and uses should be presented.

Guideline 2: Disseminate information on shipwreck projects through publications, lectures, exhibits, and professional papers. The results of shipwreck projects should be presented in professional reports and journals as well as in non-technical, popular publications (such as diver and non-diver magazine articles, adult and children's books, booklets, and pamphlets). Lectures, videos, slide shows, and exhibits on shipwreck projects, maritime history, underwater archeology, and opportunities for sport divers to participate in projects should be made available to dive clubs, dive shops, boat and dive shows, marinas, historical societies, elementary and secondary schools, community colleges, maritime museums, libraries, and other appropriate outlets. Papers on the results of shipwreck projects should be given at professional archeological, historical, and maritime conferences.

Guideline 3: Build models of vessels. Models of intact shipwrecks should be made and exhibited to provide detailed, small-scale orientation and interpretation for divers and non-divers. Models would be particularly useful when diving is prohibited (such as at the U.S.S. *Arizona* in Hawaii), is difficult (such as the *Isabella*—in dark water with a fast current—near Astoria, Oregon), or when sufficient public interest in the shipwreck exists (such as at the U.S.S. *Monitor* offshore of North Carolina). The process of building models also can be a popular and successful interpretive activity.

Guidelines 4: Include interpretive materials in underwater parks and preserves. The creation of underwater trails at shipwreck sites in underwater parks or preserves can be used to effectively interpret sites for divers. Sites and noteworthy features should be marked with permanent signs. Signs also should be placed on mooring buoys along trails. In addition, a site map and pamphlet (enclosed in mylar and small enough to fit into a buoyancy compensator pocket) should be prepared for individual shipwreck sites. Pamphlets, booklets, books, and exhibits should be prepared for divers and non-divers of all ages.

Guideline 5: Encourage public and private interest groups to disseminate information on shipwreck activities. Public and private museums (particularly maritime museums) and visitor centers should be encouraged to provide lectures, slide shows, videos, and exhibits on shipwrecks, maritime history, underwater archeology, underwater photography, diving, and the marine environment surrounding shipwreck sites. When a State's shipwreck management program permits sport divers and others to collect and keep artifacts or other materials from State-owned shipwrecks, those persons should be encouraged to make items legally recovered available for museum exhibits.

Guideline 6: Require permittees, licensees, and contractors to disseminate information about recovery activities at historic shipwrecks. When a permit, license or contract is issued for the scientific excavation, commercial salvage or treasure hunting of an historic shipwreck, the permittee, licensee or contractor should be required, as a condition to the issuance of the permit, license or contract, to:

(a) Make presentations on the results of the recovery activity and the archeological findings at professional meetings and in public forums;

(b) Prepare scientific and non-technical, popular publications; and

(c) To the extent possible, make artifacts and other materials recovered from the shipwreck available for future study, public interpretation and exhibition.

I. Establishing Volunteer Programs

Using sport diver and non-diver volunteers in shipwreck management activities can be an effective, efficient, and economical means to discover, document, study, recover, and protect publicly-owned shipwrecks. Establishing organized volunteer programs that include sport divers and other interested parties in shipwreck management activities also can enhance and nurture existing partnerships among sport divers, underwater archeologists, maritime historians, States, and Federal agencies.

The following guidelines are offered to assist the States and Federal agencies in establishing volunteer programs.

Guideline 1: Use volunteers in shipwreck projects. Dive clubs, dive

shops, dive boat operators, and individual sport divers frequently are willing to volunteer their diving skills or donate the use of their vessels or equipment to help State and Federal agencies locate, identify, evaluate, map, photograph, excavate, and protect shipwrecks. Non-divers who have an interest in maritime history and shipwrecks also often are willing to volunteer their skills to help State and Federal agencies conduct archival research and conserve artifacts and other materials recovered from shipwrecks. States and Federal agencies should use such volunteers in carrying out shipwreck projects.

Guideline 2: Maintain lists of volunteers. Lists of persons (diver and non-diver), dive clubs, and other associations and organizations that have indicated an interest in volunteering their services and equipment in shipwreck survey, mapping, and research projects should be assembled and maintained. The lists should indicate areas of interest (such as archival research, mapping or photography) and skill, noting whether those persons who are sport divers are certified in SCUBA, have any previous shipwreck project experience, or have completed any standardized diver specialty certification courses (such as advanced SCUBA, wreck diving, research diving, search and recovery, underwater photography, and basic underwater archeological methods). When evaluating a volunteer's skills, avocational experience and training courses completed out-of-State should be recognized.

Guideline 3: Distribute information on shipwreck projects to interested parties. Information on proposed shipwreck projects routinely should be distributed to sport divers, dive clubs, dive shops, dive boat operators, maritime historical societies, and other businesses, organizations and persons who may be interested in volunteering their services or donating the use of their vessels or equipment for shipwreck projects. Interested parties should be encouraged to participate.

Guideline 4: Ensure that volunteers are properly trained and supervised. At a minimum, sport divers who volunteer to work on shipwreck projects should be certified in SCUBA. Sport diver volunteers should be encouraged to complete standardized diver specialty certification courses (like the ones listed above in Guideline 2). However, completing such course work should not be necessary to participate in shipwreck projects. Diver and non-diver volunteers should be properly supervised by qualified professionals appropriate to the nature of the work being (performed (e.g., underwater archeologists should supervise volunteers who are participating in mapping and excavation projects; nautical conservators should supervise volunteers who are assisting in the conservation of recovered artifacts).

Guideline 5: Cooperate with the private sector in designing and teaching archeological methods specialty courses for sport divers. Underwater archeologists, maritime historians, and education professionals should cooperate with professional diving organizations (such as the Professional Association of Diving Instructors and the National Association of Underwater Instructors) and other educational and scientific organizations in designing and teaching standardized diver specialty certificate courses in underwater archeological methods. Such courses should provide basic training in how to research, locate, record, and report shipwrecks. Introductory courses should provide background in archival research, survey methods, site mapping, illustration, photography, diagnostic measurement skills, and standard vessel architecture. In addition, they should teach divers non-destructive, preservation oriented behavior and describe responsibilities under State and Federal laws and international law principles and treaties. Advanced courses should provide training in excavation techniques, artifact identification and conservation, and preparation of nominations of historically significant shipwrecks to the National Register of Historic Places.

Guideline 6: Rely on private sector SCUBA and diver specialty training programs. In lieu of developing government operated SCUBA and diver specialty training programs, professional diving, educational and scientific organizations that teach and certify divers in SCUBA, wreck diving, research diving, underwater photography, and basic underwater archeological methods should be relied upon to train sport divers in such techniques. Where such courses currently are not available, those organizations should be encouraged to provide certified instructors to offer such courses. Organizations also should be encouraged to produce manuals, for use by sport divers, that contain information from the specialty courses.

Guideline 7: Recognize private sector contributions to shipwreck discovery, research and preservation. Dive clubs, local historical and maritime societies, sport divers, and other organizations and persons who find and report the discovery of previously unknown shipwrecks, who volunteer their skills, or who donate the use of their vessels, supplies or equipment in shipwreck projects should be recognized for their contributions to shipwreck discovery, research and preservation. Forms of recognition should include, but not be limited to:

(a) Naming shipwreck sites after the person who discovers it;

(b) Issuing certificates or plaques to organizations and persons who find and report the discovery of previously unknown shipwreck sites; who volunteer their skills on shipwreck projects; or who donate the use of their vessels, supplies or equipment on shipwreck projects;

(c) Naming discoverers, volunteers and donors in museum exhibits, newspaper and magazine coverage, and publications; and

(d) When a State's shipwreck management program provides for the release of artifacts and other materials removed from State-owned shipwrecks, giving appropriate artifacts or materials to discoverers, volunteers and donors.

J. Creating and Operating Underwater Parks or Preserves

Section 4(b) of the Act encourages the States to create underwater parks or areas to provide additional protection for shipwreck sites. The creation of underwater parks or preserves provides many other positive benefits as well, such as increasing the public's awareness of and appreciation for the nation's maritime heritage, providing additional recreational opportunities for sport divers and fishermen, generating tourism revenues, and providing additional protection for natural resources and habitat areas located within the boundaries of the park or area. In addition, underwater parks or preserves could be linked with existing maritime museums, floating historic vessels, lighthouses, and lifesaving stations to provide the public with a broader interpretation of the nation's maritime history.

The following guidelines are offered to assist the States in creating and operating underwater parks or preserves.

Guideline 1: Consult with the various interest groups. Public meetings should be held prior to the creation of any underwater park or preserve. Suggestions for creating and operating underwater parks or preserves should be sought from local and regional interest groups, businesses and government agencies (e.g., sport divers,

dive clubs, dive boat operators, dive shops, recreational fishermen, underwater archeologists, marine biologists, chambers of commerce, recreation and tourism organizations, and applicable State and Federal agencies). Once an underwater park or preserve is created, an association or board of local citizens who represent the various interest groups should be established and consulted periodically on the operation of the park or preserve.

Guideline 2: Prepare an environmental and economic impact assessment. Prior to creating an underwater park or preserve, an assessment of the environmental and economic impacts that would result should be prepared. Assessments should include descriptions of known historic and non-historic shipwrecks, other cultural resources, natural resources, and habitat areas located within the proposed boundaries of the park or preserve; current uses and potential impacts to the shipwrecks, other resources and areas; potential recreational, educational, preservation and tourism benefits; potential impacts to businesses (such as commercial fishing); and budget estimates of costs for initial development and subsequent annual operation of the proposed park or preserve. Draft assessments should be made available to the State's shipwreck advisory board, if one exists, and the various interest groups for public review and comment.

Guideline 3: Specify the unit's purpose, significance, boundaries, and any special conditions and constraints. Legislation or regulations that authorize the creation of an underwater park or preserve should establish the unit's purpose and significance, specify its boundaries, and identify any special conditions and constraints. When the unit is to be managed by a Federal agency on behalf of a State, the enabling legislation or written management agreement should specify how the unit, its resources and habitat areas are to be managed (see Guideline No. 7 in subpart B, Part II, of these "Guidelines" for a discussion on the Federal management of State-owned resources).

Guideline 4: Develop a general management plan. A general management plan should be prepared to guide future planning and actions for each underwater park or preserve. A general management plan should discuss the unit's legislated purpose and significance; identify major issues affecting management and use of the unit and its resources; and identify management objectives, planning needs, and priorities.

Guideline 5: Develop a resource management plan. A resource management plan should be prepared for each underwater park or preserve. A resource management plan should discuss the significance and condition of known natural and cultural resources; assess the potential presence of as yet unknown resources; identify survey, identification, documentation, evaluation, interpretation, protection, and long-term preservation needs, priorities, and cost estimates; and discuss impacts to the natural and cultural resources from natural causes, visitor use, park development, and other activities. The plan should be revised periodically to reflect scientific data collected during archival research, field surveys and preservation treatments; changing environmental conditions; effects from visitor use and development; and changing park priorities. The resource management plan should be the basis upon which multiyear programming and action schedules are prepared for each underwater park or preserve.

Guideline 6: Interpret and facilitate public access to shipwreck sites in underwater parks and preserves. Shipwreck sites in parks and preserves should be marked with buoys and appear on nautical charts to encourage and promote non-disturbing recreational exploration. Known hazards should be reduced or removed. Information about dangers should be posted in prominent places and included in park brochures. Recognizing that shipwreck sites are of interest to non-divers as well as divers, interpretive materials should be developed for both interest groups. For example, permanent signs could be placed in and around the shipwreck as part of an underwater trail. In addition, pamphlets and other publications describing the unit's shipwrecks and the area's maritime history could be made available. Dock side exhibit areas and a maritime museum could be established in the unit or interpretive materials could be made available to the local community's museum or historical society. Video tapes of shipwreck sites also could be shown in an exhibit area or museum and made available for purchase.

Guideline 7: Protect shipwreck sites located within underwater parks and preserves. Moorings should be placed at shipwreck sites located within parks and preserves to protect the sites and surrounding natural resources and habitat areas from inadvertent anchor damage. Alternatively, dive boats should be required to anchor off the site. In addition, activities that would damage or destroy shipwreck sites located within parks and preserves should be prohibited or restricted so that the multiple values and uses of the sites are maintained. For example, souvenir collecting, commercial salvage, and treasure hunting at shipwrecks (whether historic or non-historic) should be prohibited in underwater parks and preserves. In addition, dredging and trawling activities should be limited to those areas of the park or preserve that do not contain shipwreck sites, natural resources and habitat areas. Also, archeological research should be regulated through a permit system.

Part III. Abandoned Shipwreck Act

On April 28, 1988, the Abandoned Shipwreck Act (Pub. L. 100–298; 102 Stat. 432; 43 U.S.C. 2101–2106) was signed into law by the President of the United States. The Act is reprinted, below, in its entirety.

An Act

To establish the title of States in certain abandoned shipwrecks, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Short Title

This Act may be cited as the "Abandoned Shipwreck Act of 1987."

Section 2. Findings

The Congress finds that—

(a) States have the responsibility for management of a broad range of living and nonliving resources in State waters and submerged lands; and

(b) Included in the range of resources are certain abandoned shipwrecks, which have been deserted and to which the owner has relinquished ownership rights with no retention.

Section 3. Definitions

For Purposes of this Act—

(a) The term "embedded" means firmly affixed in the submerged lands or in coralline formations such that the use of tools of excavation is required in order to move the bottom sediments to gain access to the shipwreck, its cargo, and any part thereof;

(b) The term "National Register" means the National Register of Historic Places maintained by the Secretary of the Interior under section 101 of the National Historic Preservation Act (16 U.S.C. 470a);

(c) The terms "public lands," "Indian lands," and "Indian tribe" have the same meaning given the terms in the Archaeological Resource Protection Act of 1979 (16 U.S.C. 470aa–47011);

(d) The term "shipwreck" means a vessel or wreck, its cargo, and other contents;

(e) The term "State" means a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands; and

(f) The term "submerged lands" means the lands—

(1) That are "lands beneath navigable waters," as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301);

(2) Of Puerto Rico, as described in section 8 of the Act of March 2, 1917, as amended (48 U.S.C. 749);

(3) Of Guam, the Virgin Islands and American Samoa, as described in section 1 of Public Law 93–435 (48 U.S.C. 1705); and

(4) Of the Commonwealth of the Northern Mariana Islands, as described in section 801 of Public Law 94–241 (48 U.S.C. 1681).

Section 4. Rights of Access

(a) Access Rights. In order to—

(1) Clarify that State waters and shipwrecks offer recreational and educational opportunities to sport divers and other interested groups, as well as irreplaceable State resources for tourism, biological sanctuaries, and historical research; and

(2) Provide that reasonable access by the public to such abandoned shipwrecks be permitted by the State holding title to such shipwrecks pursuant to section 6 of this Act, it is the declared policy of the Congress that States carry out their responsibilities under this Act to develop appropriate and consistent policies so as to—

(A) Protect natural resources and habitat areas;

(B) Guarantee recreational exploration of shipwreck sites; and

(C) Allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites.

(b) Parks and Protected Areas. In managing the resources subject to the provisions of this Act, States are encouraged to create underwater parks or areas to provide additional protection for such resources. Funds available to States from grants from the Historic Preservation Fund shall be available, in accordance with the provisions of title I of the National Historic Preservation Act, for the study, interpretation, protection, and preservation of historic shipwrecks and properties.

Section 5. Preparation of Guidelines

(a) In order to encourage the development of underwater parks and the administrative cooperation necessary for the comprehensive management of underwater resources related to historic shipwrecks, the Secretary of the Interior, acting through the Director of the National Park Service, shall within nine months after the date of enactment of this Act prepare and publish guidelines in the Federal Register which shall seek to:

(1) Maximize the enhancement of cultural resources;

(2) Foster a partnership among sport divers, fishermen, archeologists, salvors, and other interests to manage shipwreck resources of the States and the United States;

(3) Facilitate access and utilization by recreational interests;

(4) Recognize the interests of individuals and groups engaged in shipwreck discovery and salvage.

(b) Such guidelines shall be developed after consultation with appropriate public and private sector interests (including the Secretary of Commerce, the Advisory Council on Historic Preservation, sport divers, State Historic Preservation Officers, professional dive operators, salvors, archeologists, historic preservationists, and fishermen).

(c) Such guidelines shall be available to assist States and the appropriate Federal agencies in developing legislation and regulations to carry out their responsibilities under this Act.

Section 6. Rights of Ownership

(a) United States Title. The United States asserts title to any abandoned shipwreck that is—

(1) Embedded in submerged lands of a State;

(2) Embedded in coralline formations protected by a State on submerged lands of a State; or

(3) On submerged lands of a State and is included in or determined eligible for inclusion in the National Register.

(b) The public shall be given adequate notice of the location of any shipwreck to which title is asserted under this section. The Secretary of the Interior, after consultation with the appropriate State Historic Preservation Officer, shall make a written determination that an abandoned shipwreck meets the criteria for eligibility for inclusion in the National Register of Historic Places under clause (a)(3).

(c) Transfer of Title to States. The title of the United States to any abandoned shipwreck asserted under subsection (a) of this section is transferred to the State in or on whose submerged lands the shipwreck is located.

(d) Exception. Any abandoned shipwreck in or on the public lands of the United States is the property of the United States Government. Any abandoned shipwreck in or on any Indian lands is the property of the Indian tribe owning such lands.

(e) Reservation of Rights. This section does not affect any right reserved by the United States or by any State (including any right reserved with respect to Indian lands) under—

(1) Section 3, 5, or 6 of the Submerged Lands Act (43 U.S.C. 1311, 1313, and 1314); or

(2) Section 19 or 20 of the Act of March 3, 1899 (33 U.S.C. 414 and 415).

Section 7. Relation ship to Other Laws

(a) Law of Salvage and the Law of Finds. The law of salvage and the law of finds shall not apply to abandoned shipwrecks to which section 6 of this Act applies.

(b) Laws of the United States. This Act shall not change the laws of the United States relating to shipwrecks, other than those to which this Act applies.

(c) Effective Date. This Act shall not affect any legal proceeding brought prior to the date of enactment of this Act.

Approved April 28, 1988

Part IV. Shipwrecks in the National Register of Historic Places

As of December 4, 1990, there were 142 shipwrecks (and hulks) listed in or determined eligible for listing in the National Register of Historic Places. Where known, the popular name; vessel name, if different from the popular name; type of vessel; date of construction; wreck date and location; owner; manager, if different from the owner; and level of historical significance of these shipwrecks are listed below. As required by section 6(b) of the Act, the public is hereby given notice that, under the Act, the U.S. Government has asserted title to the abandoned shipwrecks listed below and transferred its title to the respective States in or on whose submerged lands the shipwrecks are located, except for shipwrecks in or on public and Indian lands. The U.S. Government retains its title to shipwrecks in or on the public lands of the United States while Indian tribes hold title to those in or on Indian lands.

Alaska

Lieut. C.V. Donaldson. The hulk of this wooden hulled steamer lies on the shoreline at Belmont Point near Nome. Built in 1907, she was laid up in 1955. Privately owned. Listed in the National Register as nationally significant.

Alabama

U.S.S. Tecumseh. This iron hulled Union monitor, built in 1863 and sunk in 1864, is entitled to sovereign immunity. The intact wreck is buried in 29 feet of water in Mobile Bay near Mobile. Owned by the U.S. Government, General Services Administration. Listed in the National Register as nationally significant.

Arizona

Charles H. Spencer. This wooden hulled stern-wheel steamer, built in 1911, lies in 20 feet of water near the shoreline of the Colorado River near Lees Ferry, within Glen Canyon National Recreation Area. Owned by the U.S. Government, National Park Service. Listed in the National Register as regionally significant.

California

City of Rio de Janeiro. This iron hulled steamer, built in 1878, was wrecked in 1901 off Point Diablo near San Francisco. The intact wreck lies in 320 feet of water just off the Golden Gate. Owned by the State of California, State Lands Commission. Listed in the National Register as nationally significant.

King Philip. The remains of this wooden hulled clipper, built in 1856, is buried on Ocean Beach in San Francisco, within Golden Gate National Recreation Area. Owned by the U.S. Government, National Park Service.

Listed in the National Register as nationally significant.

King Street Ship. This wooden hulled whaler named *Lydia,* built in 1840, was laid by in 1907. Remains of this shipwreck are buried at the foot of King Street in San Francisco. Owned by the city and county of San Francisco. Listed in the National Register as nationally significant.

Reporter. The scattered remains of this wooden hulled schooner, built in 1876, are intermingled with the remains of *King Philip* and are buried in 5 feet of water on Ocean Beach in San Francisco, within Golden Gate National Recreation Area. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

Stamboul. The remains of this wooden hulled whaler, built in 1843, are buried in 6 feet of water at the foot of 12th Street in Benicia, within Matthew Turner Shipyard Park. Owned by the city of Benicia. Listed in the National Register as nationally significant.

Tennessee. The scattered remains of this wooden hulled side-wheel steamer, built in 1848 and wrecked in 1853, are buried in 10 feet of water in the Tennessee Cove near Marin City, within Golden Gate National Recreation Area. Owned jointly by the U.S. Government, National Park Service, and the State of California, State Lands Commission. Listed in the National Register as nationally significant.

William Gray. This wooden hulled packet ship, built in 1827, was sunk in 1852 for use as a wharf. The hulk is buried beneath Battery and Greenwich Streets in San Francisco. Privately owned. Listed in the National Register as nationally significant.

Winfield Scott. The scattered remains of this wooden hulled side-wheel steamer, built in 1850 and wrecked off Anacapa Island, are buried in 25 feet of water in Channel Islands National Park and National Marine Sanctuary. Owned by the State of California, State Lands Commission. Managed jointly by the U.S. Government, National Park Service and National Oceanic and Atmospheric Administration. Listed in the National Register as nationally significant.

Connecticut

Berkshire No. 7. The intact remains of this steel and wooden canal barge, built in 1935, lie in 20 feet of water in Bridgeport Harbor, Privately owned. Listed in the National Register as nationally significant.

Elmer S. Dailey. The intact remains of this wooden Erie Canal barge, built in 1915, lie in 20 feet of water in Bridgeport Harbor. Privately owned. Listed in the National Register as nationally significant.

Priscilla Dailey. The intact remains of this wooden Champlain Canal barge, built in 1929, lie in 20 feet of water in Bridgeport Harbor. Privately owned. Listed in the National Register as nationally significant.

Delaware

State of Pennsylvania. This steel hulled passenger steamship was built in 1923. Her intact hulk lies in 5 feet of water on the shore of the Christina River near Wilmington. Privately owned. Listed in the National Register as locally significant.

Florida

Barge Site. Remains of this wooden barge are buried in Biscayne National Park. Owned by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district, level of historical significance of this wreck is undetermined.

Boiler Site. This wooden vessel, named *St. Lucie,* was built in 1888 and wrecked in 1906. Remains of this shipwreck are scattered on the bottomlands of Biscayne National Park. Owned by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district, level of historical significance of this wreck is undetermined.

Hubbard. Scattered remains of this wooden Colonial merchant vessel, wrecked in 1772, lie in 20 feet of water in Elliot Key in Biscayne National Park. Owned by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Jordan's Ballast Showing Site. Remains of this wooden vessel are buried in Biscayne National Park. Owned by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district, level of historical significance of this wreck is undetermined.

Keel Showing Site. Remains of this wooden vessel are buried in Biscayne National Park. Owned by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district, level of historical significance of this wreck is undetermined.

Legare Anchorage Shipwreck. This wooden British merchant vessel, named H.M.S. *Fowey,* wrecked in 1748. Her scattered remains are buried in Biscayne National Park. Owned by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Pillar Dollar Wreck. Scattered remains of this wooden vessel are buried in 20 feet of water in Biscayne National Park near Homestead. Owned by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Georgia

C.S.S. Chattahoochee. The scattered remains of this Confederate States Navy wooden gunboat, built and sunk in 1863, are buried in 15 feet of water in an area encompassed by the Confederate Navy Museum in Columbus; the excavated stern is deposited in the museum. This wreck is entitled to sovereign immunity. Owned jointly by the U.S. Government, General Services Administration (which owns the unexcavated remains), and the city of Columbus (which owns the excavated stern). Managed by the city of Columbus. Listed in the National Register as nationally significant.

C.S.S. Georgia. The scattered remains of this Confederate States Navy ironclad battery are buried in 28 feet of water in the Savannah River near Savannah. Built in 1862 and sunk in 1864, this wreck is entitled to sovereign immunity. Owned by the U.S. Government, General Services Administration. Managed by the U.S. Government, Army Corps of Engineers. Listed in the National Register as nationally significant.

C.S.S. Jackson. This Confederate States Navy ironclad gunboat (ex-*Muscogee*), built in 1863 and sunk in 1865, has been completely excavated; the excavated remains are deposited in the Confederate Naval Museum in Columbus. Owned by the city of Columbus. Listed in the National Register as nationally significant.

Guam

Aratama Maru. The scattered remains of this steel hulled freighter lie in 50 feet of water in Talofofo Bay. Built in 1938, this vessel was being used by the Japanese Navy as a transport when it sank in 1944, giving it sovereign immunity. Owned by the Japanese Government. Listed in the National Register as nationally significant.

S.M.S. Cormoran. This intact steel hulled steamer (ex-*Rajasan*) lies in 120 feet of water in outer Apra Harbor near Piti, within the waters of the U.S. naval station. Built in 1909, this ship was being used as a German commerce raider when it was scuttled by its crew in 1917

to avoid capture, giving it sovereign immunity. Owned by the German Government. Listed in the National Register as regionally significant.

Tokai Maru. This intact steel hulled passenger and cargo ship lies in 120 feet of water in outer Apra Harbor near Piti, within the waters of the U.S. naval station. Built in 1930, this ship was being used by the Japanese Navy when it sank in 1943, giving it sovereign immunity. Owned by the Japanese Government. Listed in the National Register as nationally significant.

Hawaii

U.S.S. Arizona. This U.S. battleship, which is entitled to sovereign immunity, was sunk on December 7, 1941, in Pearl Harbor. The intact vessel lies in the U.S.S. *Arizona* Memorial in 38 feet of water. Owned by the U.S. Government, Department of the Navy. Managed by the U.S. Government, National Park Service. Listed in the National Register as a National Historic Landmark.

U.S.S. Utah. This U.S. battleship, which is entitled to sovereign immunity, was sunk on December 7, 1941, in Pearl Harbor. The intact vessel is in 25 to 50 feet of water near Honolulu. Owned by the U.S. Government, Department of the Navy. Listed in the National Register as a National Historic Landmark.

Indiana

Muskegon. The remains of this wooden hulled side-wheel steamer (ex-*Peerless*) lie in 30 feet of water in Lake Michigan near Michigan City. She was built in 1872 and wrecked in 1911. Owned by the State of Indiana. Listed in the National Register as regional significant.

Maine

Cora F. Cressy. The intact hulk of this wooden hulled schooner lies on the shoreline of Keene Narrows near Bremen. Built in 1902, she was sunk as a breakwater. Privately owned. Listed in the National Register as nationally significant.

Defence. The remains of this wooden hulled Revolutionary War period brigantine lie buried in 23 feet of water in Stockton Springs Harbor. Built in 1778 and sunk in 1779 while privateering, this wreck is entitled to sovereign immunity. Owned by the U.S. Government, Department of the Navy. Listed in the National Register as nationally significant.

Hesper. At high tide, the intact hulk of this wooden hulled schooner lies in 8 feet of water off the waterfront of Water Street in Wiscasset. She was built in 1918 and laid up in 1936. Privately owned. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Luther Little. The intact hulk of this wooden hulled freight schooner lies in 8 feet of water off the waterfront of Water Street in Wiscasset. She was built in 1917 and laid up in 1936. Privately owned. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Michigan

Algoma. The scattered remains of this steel hulled freighter lie in 50 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. She was built in 1883 and wrecked in 1885. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

America. This intact steel hulled freighter lies in 50 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. She was built in 1898 and wrecked in 1928. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

Chester A. Congdon. This intact steel hulled freighter lies in 50 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. The vessel (ex-*Salt Lake City*) was built in 1907 and wrecked in 1918. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

Cumberland. The scattered remains of this wooden hulled side-wheel freighter lie in 20 to 150 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. She was built in 1871 and wrecked in 1877. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

Emperor. This intact, steel hulled freighter lies in 50 to 170 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. She was built in 1910 and wrecked in 1947. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

George M. Cox. The scattered remains of this steel hulled freighter (ex-*Puritan*) lie in 90 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. She was built in 1901 and wrecked in 1933. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

Glenlyon. The scattered remains of this steel hulled freighter (ex-*William H. Gratwick*) lie in 60 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. She was built in 1893 and wrecked in 1924. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

Henry Chisholm. The scattered remains of this wooden hulled freighter lie in 50 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. Built in 1880 and wrecked in 1898. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

Indiana. This intact, wooden hulled freighter lies in 125 feet of water near Paradise in Lake Superior, within Thunder Bay Bottomland Preserve. She was built in 1848 and wrecked in 1858. Owned by the State of Michigan, Department of Natural Resources. Determined eligible for the National Register as nationally significant.

Kamloops. This intact, steel hulled freighter lies in 180 to 260 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. She was built in 1924 and wrecked in 1927. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

Monarch. The scattered remains of this wooden hulled freighter lie in 20 to 70 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. She was built in 1890 and wrecked in 1906. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

Mississippi

Star of the West. This wooden hulled side-wheel steamer, built in 1852, was used by the Confederate States Navy. Renamed the C.S.S. *Philip*, the vessel was sunk in the Tallahatchie River near Greenwood in 1862 to create an obstacle to navigation against the Union. This shipwreck, which is entitled to sovereign immunity, is owned by the U.S. Government, General Services Administration. Listed in the National Register as nationally significant.

North Carolina

A.P. Hurt. The intact remains of this iron hulled stern-wheel riverboat lie in 15 feet of water in the Cape Fear River near Wilmington. She was built in 1860 and wrecked in 1924. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Arabian. The intact remains of this wooden hulled side-wheel steamer are buried in 20 feet of water off Fort Fisher at Kure Beach. Built in 1851, she

wrecked in 1863 while being used as a blockade runner. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Argonauta. Built in 1876, this iron hulled tugboat is laid up on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Argonauta Barge. The remains of this wooden barge are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Barge #1. The remains of this wooden barge are on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Barge #2. The intact remains of this wooden barge are on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Barge #3. The intact remains of this wooden hopper barge are on the shore of the Cape Fear River near Wilmington, having been sunk to serve as a bulkhead. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Barge #4. The scattered remains of this wooden barge are on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Bendigo. The remains of this iron hulled side-wheel blockade runner (ex-*Millie*) are buried on the shore of Lockwood's Folly Inlet near Wilmington. She was built in 1863 and wrecked in 1864. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Bulkhead Barge. The remains of this wooden hulled barge lie submerged near the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Bulkhead Tugboat. The remains of this wooden hulled vessel are on the shore of the Cape Fear River near Wilmington, serving as a bulkhead. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Carolina Beach Inlet Recent. The remains of this iron hulled side-wheel blockade runner are buried in 10 feet of water in the Atlantic Ocean near Carolina Beach. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Carolina Beach Inlet South Site. The remains of this iron hulled side-wheel blockade runner are buried in 15 feet of water in the Atlantic Ocean near Carolina Beach. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Cherokee. The remains of the wooden hulled launch are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Condor. The remains of this iron hulled side-wheel blockade runner are buried in 15 feet of water off Fort Fisher at Kure Beach. She was built and sunk in 1864. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

C.S.S. Raleigh. The scattered remains of this Confederate States Navy ironclad gunboat are buried in 20 feet of water off Fort Fisher at Kure Beach. She was built and sunk in 1864. This vessel is entitled to sovereign immunity. Owned by the U.S. Government, General Services Administration. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Dolphin. The intact remains of this wooden hulled tugboat, built in 1896, are on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Duoro. The remains of this iron hulled blockade runner, sunk in 1863, are buried in 10 feet of water in the Atlantic Ocean near Carolina Beach. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Eagles Island Launch. The remains of this wooden hulled launch are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Eagles Island Other Skiff. The intact remains of this wooden hulled skiff are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally signficiant.

Eagles Island Side-wheel Steamer. The remains of this wooden hulled side-wheel steamer, named *Sylvan Grove,* are buried on the shore of Eagles Island in the Cape Fear River near Wilmington. She was built in 1858 and wrecked in 1891. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Eagles Island Skiff No. 1. The remains of this wooden hulled skiff are on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Elizabeth. The scattered remains of this wooden hulled side-wheel steamer (ex-*Atlantic*) are buried on the shore of Lockwood's Folly Inlet near Wilmington. Built in 1852, she sank in 1863 while blockade running. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Ella. The remains of this iron hulled side-wheel blockade runner, built and sunk in 1864, are buried in 15 feet of water at the mouth of the Cape Fear River near Bald Head Island. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

General Beauregard. The remains of this iron hulled side-wheel blockade runner (ex-*Havelock*) are buried in 15 feet of water in the Atlantic Ocean near Carolina Beach. Built in 1858 and sunk in 1863. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Government Barge. The remains of this wooden barge are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

H.G. Wright. The remains of this wooden hulled stern-wheel boat, built in

1882, are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Hebe. The remains of this iron hulled blockade runner, built and sunk in 1863, are buried in 22 feet of water in the Atlantic Ocean near Carolina Beach. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Iron Rudder Wreck. The remains of this wooden vessel are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

John Knox. The remains of this wooden riverboat, built in 1919, lie in 10 feet of water in the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Last One Wreck. The remains of this wooden vessel lie in 2 feet of water near the shoreline of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Minnesota. The hulk of this wooden tugboat, built in 1910, is on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Modern Greece. The remains of this iron hulled blockade runner are buried in 15 feet of water off Fort Fisher at Kure Beach. Built in 1859 and sunk in 1862. Owned by the State of North Carolina. Listed in the National Register as part of an archeoleogical district, this wreck is nationally significant.

Moorefield Site. The remains of this iron hulled vessel are buried in 20 feet of water off Fort Fisher at Kure Beach. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Orange Street Wreck. The remains of this steel hulled yacht are buried in 15 feet of water in the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Phantom. The remains of this steel hulled blockade runner, built and sunk in 1863, are buried in 15 feet of water in Topsail Inlet near Topsail Island. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Ranger Site. The remains of this iron hulled side-wheel blockade runner, named *Ranger*, are buried in Lockwood's Folly Inlet near Wilmington. Built in 1863 and sunk in 1864. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Rich Inlet Wreck. The remains of this iron hulled side-wheel blockade runner, named *Wild Dayrell*, are buried in 10 feet of water in Rich Inlet near Figure 8 Island. Built in 1863 and sunk in 1864. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Sanded Barge. The remains of this wooden vessel are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Skinner's Dock Wreck. The remains of this wooden vessel are buried in 25 feet of water in the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Splayed Wreck. The scattered remains of this wooden vessel are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Steam Crane Barge #1. The intact remains of this wooden crane barge lie on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Stone #3. The hulk of this wooden tugboat (ex-*Isabella*), built in 1905, is on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Stone #4. The remains of this wooden tugboat, built in 1915, are buried on the shore of the Cape River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Stone #5. The intact remains of this wooden tugboat (ex-*Sadie E. Culver*), built in 1896, are on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Stone #6. The intact remains of this wooden tugboat (ex-*Atlantic City*), built in 1890, are on the shore of the Cape Fear River near Wilmington. Owned by the U.S. Government, Department of the Navy. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Stormy Petrel. The remains of this iron hulled side-wheel blockade runner, built and sunk in 1864, are buried in 20 feet of water off Fort Fisher at Kure Beach. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

The Little Barge. The remains of this wooden barge are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

U.S.S. Aster. The remains of this wooden tugboat, sunk in 1864 while in use by the Union Navy as a gunboat, are buried in 20 feet of water off Fort Fisher at Kure Beach. This vessel is entitled to sovereign immunity. Owned by the U.S. Government, Department of the Navy. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

U.S.S. Iron Age. The remains of this wooden side-wheel gunboat are buried in 12 feet of water in Lockwood's Folly Inlet near Wilmington. Built in 1862, she sank in 1864 while in use as a Union Navy gunboat. This vessel is entitled to sovereign immunity. Owned by the U.S. Government, Department of the Navy. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

U.S.S. Louisiana. The remains of this iron hulled steamer are buried in 20 feet of water off Fort Fisher at Kure Beach. Built in 1860, she sank in 1864 while in use as a Union Navy powder vessel. This vessel is entitled to sovereign immunity. Owned by the U.S. Government, Department of the Navy. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

U.S.S. Monitor. The intact remains of this ironclad turret monitor lie in 230 feet of water on the outer continental shelf, in the U.S.S. *Monitor* National Marine Sanctuary. She was built in 1861 and sunk in 1862. Owned by the U.S. Government, General Services Administration. Managed by the U.S. Government, National Oceanic and Atmospheric Administration. Listed in the National Register as a National Historic Landmark.

U.S.S. Peterhoff. The remains of this iron hulled side-wheel steamer are buried in 30 feet of water off Fort Fisher at Kure Beach. She sank in 1864 while in use as a Union Navy gunboat, giving her sovereign immunity. Owned by the U.S. Government, Department of the Navy. Listed in the National Register as nationally significant.

Wright Barge. The intact remains of this wooden barge are on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

Nebraska

Bertrand. The remains of this wooden stern-wheel steamboat lie in 15 feet of water at De Soto Bend in the Missouri River, near Blair, in the De Soto Wildlife Refuge. She was built in 1864 and sunk in 1865. Owned by the U.S. Government, Fish and Wildlife Service.

New Jersey

Alexander Hamilton. The hulk of this steel hulled side-wheel steamer lies in 10 feet of water in New York Harbor near Earle. Built in 1924, she was laid up in 1977 in the Hudson River. Owned by the State of New Jersey. Listed in the National Register as nationally significant.

Archeological Site #1. The remains of this wooden hulled vessel are buried in 5 feet of water in Barges Creek near Hamilton Township. Owned by the State of New Jersey. Listed in the National Register as nationally significant.

Bead Wreck. The scattered remains of this wooden vessel are buried in 12 feet of water in the Mullica River near Chestnut Neck. Owned by the State of New Jersey. Listed in the National Register as nationally significant.

New York

Bessie M. Dustin. The remains of this wooden schooner are on the shore of Shooter's Island in New York Harbor. Built in 1918, this vessel was laid up in 1936. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

H.M.S. Culloden. The intact remains of this wooden British man-of-war lie on the bottomlands of Fort Pond Bay. Built in 1776 and sunk in 1781, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register, level of historical significance is undetermined.

Hoffmans. The hulk of this wooden covered barge, built in 1907, lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

Jacob A. Decker. The hulk of this wooden barge, built in 1930, lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

Keating. The hulk of this wooden barge, built in 1912, lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

Minerva. The hulk of this wooden, side-wheel steamer (ex-Jane *Moseley*) lies in 10 feet of water near the shore of Shooter's Island in New York Harbor. Built in 1873, this vessel was laid up and dismantled in 1932. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

Vessel 28. The hulk of this wooden tugboat lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

Vessel 30. The hulk of this wooden tugboat lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

Vessel 34. The hulk of this wooden tugboat lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

Vessel 37. The hulk of this wooden, covered barge lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

Vessel 41. The hulk of this wooden, covered barge lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

Vessel 43. The hulk of this wooden, covered barge lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

Vessel 48. The hulk of this wooden tugboat lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

Vessel 53. The hulk of this wooden, side-wheel steamer lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

Vessel 54. The hulk of this wooden package freighter lies in 10 feet of water near the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

Vessel 59. The hulk of this wooden schooner lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

Vessel 84. The hulk of this wooden sailing lighter lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

Oregon

Isabella. The remains of this wooden brig are buried in 40 feet of water off Cape Disappointment at the mouth of the Columbia River, near Astoria. Built in 1825, this vessel wrecked in 1830 while in use as a Hudson Bay Company supply ship. Owned by the State of Oregon, Division of State Lands. Listed in the National Register as part of an archeological district of national significance.

Rhode Island

H.M.S. Orpheus. The remains of this wooden British frigate are buried in Narragansett Bay near Middletown. Built in 1773 for the Royal Navy, this vessel was scuttled in 1778. This vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as nationally significant.

South Carolina

Brown's Ferry Wreck. The remains of this wooden sailing vessel are buried on the shore of the Black River near Georgetown. This vessel wrecked in 1740 while in use as a cargo vessel.

Owned by the State of South Carolina, Institute of Archaeology and Anthropology. Listed in the National Register as nationally significant.

Texas

Mansfield Cut Wrecks. The scattered remains of this wooden vessel, named *San Esteban,* are buried off Padre Island near Port Mansfield. This vessel, which wrecked in 1554 when part of a treasure flota, lies within the Padre Island National Seashore, Owned by the State of Texas, Texas Antiquities Committee. Managed by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district of national significance.

Mansfield Cut Wrecks. The scattered remains of this wooden vessel, named *Santa Maria de Yciar,* are buried off Padre Island near Port Mansfield. This vessel, which wrecked in 1554 when part of a treasure flota, lies within the Padre Island National Seashore. Owned by the State of Texas, Texas Antiquities Committee. Managed by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district of national significance.

Mansfield Cut Wrecks. The scattered remains of this wooden vessel, named *Espiritu Santo,* are buried off Padre Island near Port Mansfield. This vessel, which wrecked in 1554 when part of a treasure flota, lies within the Padre Island National Seashore, Owned by the State of Texas, Texas Antiquities Committee. Managed by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district of national significance.

U.S.S. Hatteras. The remains of this iron hulled, side-wheel schooner (ex-*St. Mary's*) are buried in 55 feet of water on the outer continental shelf off the coast of Galveston. Built in 1861, this vessel was in use by the Union Navy when it sank in 1863, giving her sovereign immunity. Owned by the U.S. Government, Department of the Navy. Listed in the National Register, level of historical significance is undetermined.

Virginia

Cornwallis Cave Wreck. The remains of this wooden Royal Navy transport and supply vessel are buried in 12 feet of water in the York River near Yorktown. This vessel, which was scuttled in 1781, is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as part of an archeological district of regional significance.

C.S.S. Florida. The remains of this wooden Confederate States Navy cruiser are buried in 63 feet of water in the James River near Newport News. Built in 1863, this vessel was in the possession of the Union Navy as a prize of war when she sank in 1864. This vessel is entitled to sovereign immunity. Owned by the U.S. Government, Department of the Navy. Determined eligible for the National Register as nationally significant.

H.M.S. Charon. The remains of this wooden Royal Navy fifth-rate warship lie in 15 feet of water in the York River off Gloucester Point. Built in 1778 and sunk in 1781, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as part of an archeological district of regional significance.

U.S.S. Cumberland. The scattered remains of this wooden Union Navy frigate are buried in 40 feet of water in the James River off Pier C at Newport News. Built in 1842 and sunk in 1862, this vessel is entitled to sovereign immunity. Owned by the U.S. Government, Department of the Navy. Determined eligible for the National Register as nationally significant.

Yorktown Fleet #1. The remains of this wooden Royal Navy transport are buried in 15 feet of water in the York River off Gloucester Point. Scuttled in 1781, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as part of an archeological district of national significance.

Yorktown Fleet #2. The remains of this wooden Royal Navy transport are buried in 60 feet of water in the York River near Yorktown. Scuttled in 1781, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as part of an archeological district of national significance.

Yorktown Fleet #3. The remains of this wooden Royal Navy transport are buried in 20 feet of water in the York River near Yorktown. Scuttled in 1781, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as part of an archeological district of national significance.

Yorktown Fleet #4. The remains of this wooden Royal Navy transport are buried in 30 feet of water in the York River near Yorktown. Scuttled in 1781, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as part of an archeological district of national significance.

Yorktown Fleet #5. The remains of this wooden Royal Navy transport are buried in 20 feet of water in the York River near Yorktown. Scuttled in 1781, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as part of an archeological district of national significance.

Yorktown Fleet #6. The remains of this wooden Royal Navy transport are buried in 20 feet of water in the York River near Yorktown. Scuttled in 1781, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as part of an archeological district of national significance.

Yorktown Wreck. The remains of this wooden merchant vessel, used as a Royal Navy transport and supply ship, lie in 20 feet of water in the York River near Yorktown. Scuttled in 1781, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as part of an archeological district of national significance.

Virgin Islands

H.M.S. Santa Monica. The remains of this wooden Royal Navy frigate lie in 24 feet of water in Round Bay near Coral Bay. Wrecked in 1782 while on patrol, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as locally significant.

Washington

La Merced. The hulk of this wooden schooner lies on the shore of the Guemes Channel in Puget Sound near Anacortes. Built in 1917, this vessel was laid up to form a breakwater. Privately owned. Listed in the National Register as nationally significant.

[FR Doc. 90-20350 Filed 12-3-90; 8:45 am]
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federal register

Tuesday
December 4, 1990

Part IV

Department of Labor

Employment Standards Administration, Wage and Hour Division
Office of the Secretary

29 CFR Parts 1 and 5

Procedures for Predetermination of Wage Rates; Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction and to Certain Nonconstruction Contracts; Final Rule

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Office of the Secretary

29 CFR Parts 1 and 5

Procedures for Predetermination of Wage Rates; Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction and to Certain Nonconstruction Contracts

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Establishment of effective date.

SUMMARY: This document provides the effective date for amended Regulations, 29 CFR parts 1 and 5, governing the use of semi-skilled "helpers" on federally-financed and assisted construction contracts subject to the Davis-Bacon and Related Acts (DBRA). This final rule was previously published in the **Federal Register** (54 FR 4234) on January 27, 1989. The implementation of an earlier version of this rule was enjoined by the U.S. District Court for the District of Columbia on July 22, 1982. Following promulgation of the revised final regulation, that injunction was vacated on September 24, 1990.

EFFECTIVE DATE: February 4, 1991.

FOR FURTHER INFORMATION CONTACT: Samuel D. Walker, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523-8305. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION

Background

The Department of Labor (DOL) attempted to implement helper rules in May 1982. (See 47 FR 23644, 23658 (May 28, 1982); 47 FR 32070 (July 20, 1982).) Among other provisions, lower paid helpers would have been allowed on DBRA projects under a broad definition of duties and in a maximum ratio of two helpers for three journeymen whenever the helper classification was "identifiable" in an area. The rules were enjoined by the U.S. District Court for the District of Columbia in a lawsuit brought by the Building and Construction Trades Department, AFL-CIO, and a number of individual unions (*Building and Construction Trades Department, AFL-CIO, et al.* v. *Donovan, et al.*, 543 F. Supp. 1282, 553 F. Supp. 352).

On appeal, the Court of Appeals for the District of Columbia Circuit upheld DOL's authority to allow an expanded use of helpers and approved the regulatory definition of a helper's duties (*Building and Construction Trades Department, AFL-CIO, et al.* v. *Donovan, et al.*, 712 F.2d 611). However, that ruling required that the regulations be modified to require that DOL first find the use of a particular helper classification prevailing in an area (rather than identifiable) before it may be used. The court concluded that allowing a lower paid helper classification to be used on DBRA work when that classification was only "identifiable" would result in payment of less than prevailing wages for some work, which is prohibited by the DBRA. The court did not rule on the remaining helper provisions. *Certiorari* was denied by the Supreme Court (464 U.S. 1069).

The District Court subsequently issued an order which lifted the injunction on the definition of helper but continued the injunction against all the other helper provisions, and stated that DOL could "submit to this court reissued regulations governing the use of helpers, and if these regulations conform to the decision of the court of appeals, they will be approved." (*Building and Construction Trades Department, AFL-CIO, et al.* v. *Donovan, et al.*, 102 CCH Labor Cases para. 34,648 (December 21, 1984)).

DOL reexamined the enjoined provisions to the extent required by the court rulings and on August 19, 1987, issued a new proposal with necessary revisions (52 FR 31366).

Comments were invited on several alternatives for determining if the use of a helper classification prevailed.

The Department published a final rule on January 27, 1989 (54 FR 4234), stating therein that once the injunction against implementation of some provisions was lifted, the Department would publish a notice providing for an effective date 60 days thereafter. The Department submitted the revised rules to the District Court in accordance with the court's decision of December 21, 1984. The court vacated the injunction on September 24, 1990. (*Building and Construction Trades Department, AFL-CIO, et al.* v. *Dole, et al.*, Civil Action No. 82-1631).

Summary of Rule

To determine whether a helper classification prevails, the Department has adopted a scheme patterned after the codified regulatory standards for determining the prevailing wage for a given classification. Section 1.7(d) provides a decision that proceeds in two steps:

(1) If the prevailing journeylevel wage is set by the "majority rule" (29 CFR 1.2(a)(1); more than 50 percent of the journeymen are paid the same rate), then the practice followed by those contractors whose rates prevail for the journeymen is also deemed the prevailing practice for determining whether a helper classification prevails, or,

(2) If no majority journeylevel rate exists and the prevailing wage is set by the "weighted average rule" (29 CFR 1.2(a)(1); the average of the wages paid to the journeymen, weighted by the total journeymen in the classification), then the total number of workers in the classification employed by contractors using helpers (journeymen plus apprentices, trainees and helpers) will be compared to the total number of workers in the classification employed by contractors not using helpers (journeymen plus apprentices and trainees); the practice covering the larger number of workers will decide whether a helper classification prevails.

The notice of proposed rulemaking made no changes to the helper definition at § 5.2(n)(4) promulgated in 1982. It was repeated in the preamble of the 1987 proposal for informational purposes only, and is implemented herein. The rule defines a helper as a semi-skilled worker who works under the direction of and assists a journeyman. Helpers are able to perform a broad range of duties under a journeyman's supervision; the duties vary according to area practice.

Section 5.5(a)(1)(ii)(A) sets forth special criteria under which helper classifications and wage rates can be "conformed" (i.e., added after the wage determination has been issued) if a particular wage determination does not contain a helper classification. This section provides, as did the rule promulgated in 1982, that helper rates can be conformed without regard to the longstanding requirement, applicable to all other conformance actions, that the work of a proposed classification to be conformed not be performed by another classification already listed in the wage determination. In addition, a provision was added as a result of the court of appeals decision to require that helper classifications may be conformed only where they prevail in the area covered by the wage determination.

The enjoined 1982 regulations contained a numerical limitation on the use of helpers: Two helpers for every three journeymen, or not more than 40 percent of the total number of helpers

and journeymen, in the contractors' work force on the job site. (A one-helper-to-five-journeymen ratio was originally proposed, but was raised to 2:3 in the final rule in response to public comments that 1:5 was too restrictive and would not reflect the actual number of helpers used in the industry.)

Helpers employed in excess of this ratio would be required to be paid the applicable journeymen (or laborer's where appropriate) wage rate for the work actually performed. To insure that this ratio does not disrupt existing established local practices in areas where DBRA wage determinations currently contained helper classifications without any limitation on the number permitted, DOL will consider requests for variances from the ratio limitation prior to bid opening on a contract, if supported by a showing that the DBRA wage determination for the type of construction in effect in the area before the effective date of the final helper regulations contained a helper classification, and that there was a practice in the area of utilizing such helpers in the classification on DBRA projects in excess of the two-to-three ratio.

The ratio and variance provisions were not open for additional comment in the 1987 proposed rulemaking and are implemented herein.

Paperwork Reduction Act

The information collection requirements contained in § 5.5(a)(1)(ii) of part 5 were previously approved by the Office of Management and Budget under the Paperwork Reduction Act and assigned OMB Control number 1215-0140.

Dates of Applicability

This regulation shall be effective February 4, 1991.

The revisions to § 1.7(d) of part 1 shall be applicable only as to wage determinations issued based on wage surveys completed on or after the effective date of this revised rule. A wage survey will be deemed to be completed as of the cut-off date established for submission of wage data.

The revisions to §§ 5.2 and 5.5 of part 5 shall be applicable only as to contracts entered into pursuant to invitations for bids issued or negotiations concluded on or after the effective date of this revised rule. None of the revisions herein shall be applicable to any contract entered into prior to such date.

This document was prepared under the direction and control of Samuel D. Walker, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects

29 CFR Part 1

Administrative practice and procedures, Government contracts, Labor, Minimum wages, Wages.

29 CFR Part 5

Administrative practice and procedures, Government contracts, Labor, Minimum wages, Penalties, Reporting and recordkeeping requirements, Wages.

Signed at Washington, DC on this 28th day of November, 1990.

Roderick A. DeArment,

Acting Secretary of Labor.

William C. Brooks,

Assistant Secretary for Employment Standards.

Samuel D. Walker,

Acting Administrator, Wage and Hour Division.

Accordingly, an effective date of February 4, 1991 is established for 29 CFR parts 1 and 5, which were published in the **Federal Register** of January 27, 1989 (54 FR 4234).

For the convenience of the public, the rules are hereby republished as set forth below:

PART 1—PROCEDURES FOR PREDETERMINATION OF WAGE RATES

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

Authority: 5 U.S.C. 301: R.S. 161.64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 29 U.S.C. 259; 40 U.S.C. 276a–276a–7; 40 U.S.C. 276c; and the laws listed in Appendix A of this Part.

2. Section 1.7 is amended by adding a new paragraph (d) to read as follows:

§ 1.7 Scope of consideration.

* * * * *

(d) The use of *helpers, apprentices* and *trainees* is permitted in accordance with part 5 of this subtitle. Wage rates for semi-skilled classifications of helpers will be issued when the classifications are prevailing in the area. In determining whether use of a particular helper classification prevails in the area, the Administrator will follow the criteria set forth in paragraphs (d)(1) and (d)(2) of this section.

(1) If the prevailing wage for a particular journeyman classification is a wage that is paid to the majority of the journeymen in the classification as defined in § 1.2(a)(1) of this part, then the practice followed by those contractors whose rates are adopted as prevailing for the journeyman shall also be deemed the prevailing practice in determining whether to issue a helper classification. Any ambiguity with regard to such practice, will be resolved by following the rule in paragraph (d)(2) of this section with respect to those contractors.

(2) If the prevailing wage for a particular journeyman classification is the average of the wages paid to the journeymen, weighted by the total number of journeymen in the classification as defined in § 1.2(a)(1) of this part, then the total number of workers in the classification employed by contractors utilizing helpers (journeymen plus apprentices, trainees, and helpers as defined in § 5.2(n)(4) of this chapter) on reported projects will be compared to the total number of workers in the classification employed by contractors not utilizing helpers (journeymen plus apprentices and trainees as defined in § 5.2(n)(4) of this chapter), and the practice which covers the majority of such workers shall be deemed the prevailing practice in determining whether to issue a helper classification.

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

Subpart A—Davis-Bacon and Related Acts Provisions and Procedures

3. The authority citation for part 5 continues to read as follows:

Authority: 40 U.S.C. 276a–276a–7; 40 U.S.C. 276c; 40 U.S.C. 327–332; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. 301; 29 U.S.C. 259; and the statutes listed in § 5.1(a) of this part.

4. Section 5.2 is amended by revising paragraph (n) introductory text and by adding paragraph (n)(4) to read as follows:

§ 5.2 Definitions.

* * * * *

(n) The terms apprentice, trainee, and helper are defined as follows:

* * * * *

(4) A *helper* is a semi-skilled worker (rather than a skilled journeyman mechanic) who works under the direction of and assists a journeyman. Under the journeyman's direction and

supervision, the helper performs a variety of duties to assist the journeyman such as preparing, carrying and furnishing materials, tools, equipment, and supplies and maintaining them in order; cleaning and preparing work areas; lifting, positioning, and holding materials or tools; and other related, semi-skilled tasks as directed by the journeyman. A helper may use tools of the trade at and under the direction and supervision of the journeyman. The particular duties performed by a helper vary according to area practice.

* * * * *

5. Section 5.5 is amended by revising paragraph (a)(1)(ii)(A) and adding a new paragraph (a)(4)(iv), to read as follows:

§ 5.5 Contract provisions and related matters.

(a) * * *

(1) * * *

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(*1*) Except with respect to helpers as defined in 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(*2*) The classification is utilized in the area by the construction industry; and

(*3*) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(*4*) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

* * * * *

(4) * * *

(iv) *Helpers.* Helpers will be permitted to work on a project if the helper classification is specified on an applicable wage determination or is approved pursuant to the conformance procedure set forth in § 5.5(a)(1)(ii). The allowable ratio of helpers to journeymen employed by the contractor or subcontractor on the job site shall not be greater than two helpers for every three journeymen (in other words, not more than 40 percent of the total number of journeymen and helpers in each contractor's or in each subcontractor's own work force employed on the job site). Any worker listed on a payroll at a helper wage rate, who is not a helper as defined in 29 CFR 5.2(n)(4), shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any helper performing work on the job site in excess of the ratio permitted shall be paid not less than the applicable journeyman's (or laborer's, where appropriate) wage rate on the wage determination for the work actually performed.

* * * * *

[FR Doc. 90-28297 Filed 12-3-90; 8:45 am]
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federal register

Tuesday
December 4, 1990

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 9

Federal Acquisition Regulation (FAR); Debarment, Suspension, and Ineligibility; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 9

Federal Acquisition Regulation (FAR); Debarment, Suspension, and Ineligibility

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to the FAR to provide examples as to remedial measures or mitigating factors that should be considered when evaluating whether a contractor's debarment is warranted. The inclusion of this coverage will assist industry and Government officials involved in debarment actions by formalizing the types of considerations presently being utilized in determining whether a contractor should be debarred.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 4, 1991, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th and F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 90-56 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 501-4547.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it merely provides procedural and policy guidance to contracting officers, and imposes no requirement of any kind upon small entities. Comments from small entites concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 90-610 (FAR Case 90-56) in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 9

Government procurement.

Dated: November 20, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 9 be amended as set forth below:

PART 9—CONTRACTOR QUALIFICATIONS

1. The authority citation for 48 CFR part 9 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 9.406-1 is amended by revising paragraph (a) to read as follows:

9.406-1 General.

(a) It is the debarring official's responsibility to determine whether debarment is in the Government's interest. The debarring official may, in the public interest, debar a contractor for any of the causes in 9.406-2, using the procedures in 9.406-3. The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any remedial measures or mitigating factors should be considered in making any debarment decision. Before arriving at any debarment decision, the debarring official should consider factors such as the following:

(1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of alleged wrongdoing.

(2) Whether the contractor brought the wrongdoing to the attention of the appropriate Government agency in a timely manner.

(3) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and if so, made the result of the investigation available to the debarring official.

(4) Whether the contractor cooperated fully with Government agencies during the investigation and any court or administrative action.

(5) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.

(6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.

(7) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government.

(8) Whether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs.

(9) Whether the contractor has had adequate time to eliminate the circumstance within the contractor's organization that led to the cause for debarment.

(10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

The existence or nonexistence of any mitigating factors or remedial measures set forth in this paragraph (a) is not necessarily determinative of a contractor's present responsibility. Accordingly, if a cause for debarment exists, the contractor has the burden of demonstrating, to the satisfaction of the debarring official, its present responsibility and that debarment is not necessary.

* * * * *

[FR Doc. 90-28433 Filed 12-3-90; 8:45 am]

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H.R. 987/Pub. L. 101-626

Tongass Timber Reform Act. (Nov. 28, 1990; 104 Stat. 4426; 10 pages) Price: $1.00

H.R. 2061/Pub. L. 101-627

Fishery Conservation Amendments of 1990. (Nov. 28, 1990; 104 Stat. 4436; 33 pages) Price: $1.25

H.R. 2570/Pub. L. 101-628

To provide for the designation of certain public lands as wilderness in the State of Arizona. (Nov. 28, 1990; 104 Stat. 4469; 42 pages) Price: $1.25

H.R. 3095/Pub. L. 101-629

Safe Medical Devices Act of 1990. (Nov. 28, 1990; 104 Stat. 4511; 20 pages) Price: $1.00

H.R. 3703/Pub. L. 101-630

To authorize the Rumsey Indian Rancheria to convey a certain parcel of land. (Nov. 28, 1990; 104 Stat. 4531; 38 pages) Price: $1.25

H.R. 4567/Pub. L. 101-631

To authorize an exchange of lands in South Dakota and Colorado. (Nov. 28, 1990; 104 Stat. 4569; 6 pages) Price: $1.00

H.R. 4834/Pub. L. 101-632

To provide for a visitor center at Salem Maritime National Historic Site in the Commonwealth of Massachusetts. (Nov. 28, 1990; 104 Stat. 4575; 2 pages) Price: $1.00

H.R. 5428/Pub. L. 101-633

Illinois Wilderness Act of 1990. (Nov. 28, 1990; 104 Stat. 4577; 3 pages) Price: $1.00

S. 319/Pub. L. 101-634

Salt Lake City Watershed Improvement Act of 1990. (Nov. 28, 1990; 104 Stat. 4580; 3 pages) Price: $1.00

S. 845/Pub. L. 101-635

Food and Drug Administration Revitalization Act. (Nov. 28, 1990; 104 Stat. 4583; 3 pages) Price: $1.00

S. 1859/Pub. L. 101-636

To restructure repayment terms and conditions for loans made by the Secretary of the Interior to the Wolf Trap Foundation for the Performing Arts for the reconstruction of the Filene Center in Wolf Trap Farm Park in Fairfax County, Virginia, and for other purposes. (Nov. 28, 1990; 104 Stat. 4586; 3 pages) Price: $1.00

S. 1893/Pub. L. 101-637

Asbestos School Hazard Abatement Reauthorization Act of 1990. (Nov. 28, 1990; 104 Stat. 4589; 10 pages) Price:$1.00

S. 1939/Pub. L. 101-638

To extend the authorization of appropriations for the Taft Institute. (Nov. 28, 1990; 104 Stat. 4599; 1 page) Price: $1.00

S. 2628/Pub. L. 101-639

Mental Health Amendments of 1990. (Nov. 28, 1990; 104 Stat. 4600; 4 pages) Price: $1.00

S. 2740/Pub. L. 101-640

Water Resources Development Act of 1990. (Nov. 28, 1990; 104 Stat. 4604; 50 pages) Price: $1.50

S. 3012/Pub. L. 101-641

Independent Safety Board Act Amendments of 1990. (Nov. 28, 1990; 104 Stat. 4654; 5 pages) Price: $1.00

S.J. Res. 329/Pub. L. 101-642

To designate the week of November 3, 1990, to November 10, 1990, as "National Week to Commemorate the Victims of the Famine in the Ukraine, 1932-1933", and to commemorate the Ukrainian famine of 1932-1933 and the policies of Russification to suppress Ukrainian identity. (Nov. 28, 1990; 104 Stat. 4659; 2 pages) Price: $1.00

S.J. Res. 364/Pub. L. 101-643

To designate the third week of February 1991 as "National Parents and Teachers Association Week". (Nov. 28, 1990; 104 Stat. 4661; 1 page) Price: $1.00

H.R. 2006/Pub. L. 101-644

To expand the powers of the Indian Arts and Crafts Board, and for other purposes. (Nov. 29, 1990; 104 Stat. 4662; 11 pages) Price: $1.00

H.R. 3789/Pub. L. 101-645

Stewart B. McKinney Homeless Assistance Amendments Act of 1990. (Nov. 29, 1990; 104 Stat. 4673; 88 pages) Price: $2.50

H.R. 5390/Pub. L. 101-646

To prevent and control infestations of the coastal inland waters of the United States by the zebra mussel and other nonindigenous aquatic nuisance species, to reauthorize the National Sea Grant College Program, and for other purposes. (Nov. 29, 1990; 104 Stat. 4761; 28 pages) Price: $1.00

S. 3266/Pub. L. 101-647

Crime Control Act of 1990. (Nov. 29, 1990; 104 Stat. 4789; 180 pages) Price: $5.00