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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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WHEN: March 4, at 9:00 a.m.
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WHEN: March 5, at 9:00 a.m.
WHERE: Federal Building,
880 Front St.
Conference Room 45–13
San Diego, CA
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Presidential Documents

Title 3—

The President

Proclamation 6246 of February 5, 1991

National Visiting Nurse Associations Week, 1991

By the President of the United States of America

A Proclamation

Visiting Nurse Associations have provided high-quality, affordable health care services to homebound Americans for more than 100 years. The dedicated men and women who carry on the work of these independently operated, voluntary associations make it possible for patients to obtain needed care while remaining in familiar, comfortable surroundings, among family and friends. In so doing, visiting nurse professionals bring to their work a warm, personal touch as well as valuable knowledge and skills.

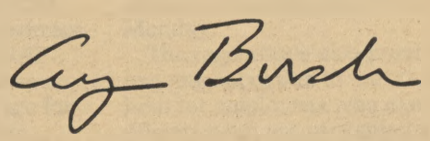
Over the years Americans have come to equate Visiting Nurse Associations with reliable home health care for persons recuperating from illness or injury, for persons incapacitated by physical or mental disabilities, for the terminally ill, and for those suffering from chronically disabling diseases. These associations offer a wide range of medical care and support services—including specialized nursing, nutritional counseling, homemaker and home health aide services, as well as speech, physical, and occupational therapy. As nonprofit, community-based organizations, Visiting Nurse Associations not only stay attuned to the particular needs of individuals and families but also help to mitigate rising health care costs.

This week we gratefully recognize the important contribution that Visiting Nurse Associations make to our Nation's health care system. We also honor the generous, hardworking men and women who serve their fellow Americans through these valued organizations.

The Congress, by Public Law 101–468, has designated the week beginning February 17, 1991, as "National Visiting Nurse Associations Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning February 17, 1991, as National Visiting Nurse Associations Week. I invite all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of February, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.



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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831 and 842

Retirement Coverage for NAF Employees

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim rules and requesting comments on the rules governing retirement coverage under the Portability of Benefits for Nonappropriated Fund Employees Act of 1990. These regulations are necessary to implement the retirement provisions of the Act. They establish rules governing elections available to certain employees who may elect to continue retirement coverage under the Civil Service Retirement System, Federal Employees Retirement System, or a retirement system for employees of a nonappropriated fund instrumentality when they first move to employment covered by a different retirement system.

DATES: Interim rules effective November 5, 1990; comments must be received on or before April 8, 1991.

ADDRESSES: Send comments to Andrea Minniear Farran, Assistant Director for Retirement and Insurance Policy; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606–0775, extension 207.

SUPPLEMENTARY INFORMATION: The Portability of Benefits for Nonappropriated Fund Employees Act of 1990 was enacted as Section 7202 of the Omnibus Budget Reconciliation Act of 1990, Public Law 100–508. It provides that certain employees of nonappropriated fund (NAF) instrumentalities in the Department of Defense and Coast Guard may retain coverage under a retirement system for NAF employees when they are moved into civil service jobs, and that certain employees with civil service jobs may retain retirement coverage under the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS) when they move into jobs with NAF instrumentalities. These regulations establish the process for electing to continue coverage.

The first time the employee moves from NAF employment to civil service after becoming a vested participant in a NAF retirement plan, the employee gets his or her only opportunity to retain coverage under the retirement system for NAF employees for all future service. The first time the employee moves from civil service to NAF employment after performing 5 years of creditable civilian service under CSRS or FERS, the employee gets his or her only opportunity to elect to retain his or her retirement coverage under CSRS or FERS for all future service.

For example, when a Coast Guard employee who has performed 5 years of creditable civilian service under FERS moves to NAF employment with the Coast Guard, the employee has a one-time opportunity to elect to continue FERS coverage. If the employee elects to continue FERS coverage, the employee may never acquire service credit under a retirement system for NAF employees and all future service in NAF or civil service positions that are not excluded from FERS coverage (such as service under temporary or intermittent appointments) will earn FERS credit. Such an employee would have no further election rights.

Continuing the same example, if the employee did not elect to retain FERS coverage, the employee begins coverage under the retirement system for NAF employees. The employee will have no further right to elect FERS coverage for periods of NAF employment. If the employee continues NAF employment long enough to become a vested participant in the retirement system for NAF employees and thereafter moves to a civil service position with the Coast Guard, the employee has a one-time opportunity to elect to remain under the retirement system for NAF employees. If the employee elects to continue coverage under the retirement system for NAF employees, the employee may never acquire service credit under CSRS or FERS and all future service in NAF or civil service positions that are not excluded from coverage under the retirement system for NAF employees will earn credit under the retirement system for NAF employees. If the employee does not elect to retain coverage under the retirement system for NAF employees, for all future service the employee will be covered by the retirement system that normally covers his or her position as would have happened prior to enactment of the Portability of Benefits for Nonappropriated Fund Employees Act of 1990.

For an employee to have the right to an election, the move must be within the Department of Defense or within the Coast Guard. For example, an employee of a NAF instrumentality in the Department of Defense who moves to a civil service position in the Department of Defense has an election right, but if the move were to a Coast Guard civil service position, he or she would have no election right. If the employee is later employed by a different, non-Department of Defense agency, after having made an election to remain in the NAF plan, he or she would remain under that plan.

Generally, the election must be made within 30 days (computed under § 831.107 or § 841.109 of Title 5, Code of Federal Regulations) after the move. However, the regulations contain two exceptions to the general rule. The time limit for making an election is 180 days after enactment of the Act for employees whose election opportunity would ordinarily expire before the 180th day after enactment. Since that day (May 4, 1991) is a Saturday, the deadline stated in the regulation is the following Monday.

The regulations also provide an ongoing exception to the 30-day time limit for employees who exercise due diligence but are prevented by circumstances beyond their control from making a timely election. The regulations authorize the employing agencies to establish the meaning of due diligence and circumstances beyond the employee's control and the procedures

for applying this exception. The regulations prohibit the use of employee grievance procedures because OPM has consistently taken the position that retirement matters are strictly controlled by statute and must remain nonnegotiable. (*See* 5 U.S.C. 7121(c)(2).)

Waiver of Notice of Proposed Rulemaking

Under 5 U.S.C. 553 (b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and making these regulations effective in less than 30 days. Delaying the effective date of these regulations would be contrary to the public interest. The Portability of Benefits for Nonappropriated Fund Employees Act of 1990 gave certain employees the right to elect continuation of retirement coverage effective November 5, 1990. These regulations are necessary to establish the election procedures. Delaying the effective date of these regulations beyond the statutory effective date would require employees to wait to make elections that the law provided would be immediately available.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retirement coverage of Federal employees.

List of Subjects in 5 CFR Parts 831 and 842

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending 5 CFR parts 831 and 842 as follows:

PART 831—RETIREMENT

Subpart B—Coverage

1. The authority citation for subpart B of part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347; § 831.204 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508.

2. In § 831.201, paragraph (h) is added to read as follows:

§ 831.201 Exclusions from retirement coverage.

* * * * *

(h) Employees who have elected coverage under another retirement system in accordance with § 831.204 are excluded from subchapter III of chapter 83 of title 5, United States Code, during that and all subsequent periods of service (including service as a reemployed annuitant).

3. Section 831.204 is added to read as follows:

§ 831.204 Elections of retirement coverage under the Portability of Benefits for Nonappropriated Fund Employees Act of 1990.

(a) An employee of the Department of Defense or the Coast Guard who has 5 years of civilian service creditable under CSRS, who has not made an election under this section, who has not had an opportunity to make an election of retirement coverage under this paragraph, and who moves, without a break in service of more than 3 days, to employment as an employee of an instrumentality described in section 2105(c) of title 5, United States Code, in the Department of Defense (if the employment covered by CSRS immediately prior to the move was with the Department of Defense) or the Coast Guard (if the employment covered by CSRS immediately prior to the move was with the Coast Guard) may elect to remain covered by CSRS. An employee who elects to remain covered by CSRS under this paragraph will be covered by CSRS (or FERS, if the employee subsequently transfers to FERS under part 846 of this chapter) during all periods of future service not excluded from coverage by CSRS, including any periods of service with an instrumentality described in section 2105(c) of title 5, United States Code. An election under this paragraph is irrevocable when received by the employing agency.

(b) An employee of an instrumentality described in section 2105(c) of title 5, United States Code, who is a vested participant in a retirement system established for such employees (as the term "vested participant" is defined by that retirement system), who has not made an election under this section, who has not had an opportunity to make an election of retirement coverage under this paragraph, who moves without a break in service of more than 3 days, to employment covered by CSRS in the Department of Defense (if the employment immediately prior to the move was with a nonappropriated fund instrumentality of the Department of Defense) or the Coast Guard (if the employment immediately prior to the move was with a nonappropriated fund instrumentality of the Cost Guard), and who is excluded from coverage under FERS by section 8402(b) of title 5, United States Code, may elect to remain covered by the retirement system for such employees. An employee who makes an election under this paragraph is excluded from coverage under CSRS or FERS during that and all subsequent periods of employment, including any periods of service as a reemployed annuitant. An election under this paragraph is irrevocable when received by the employing agency.

(c) The Department of Defense will establish procedures for agencies to withhold and submit retirement contributions to the retirement systems for employees of instrumentalities described in section 2105(c) of title 5, United States Code, who have elected to be covered by a retirement system for such employees under paragraph (b) of this section and who are later employed by another agency.

(d) Except as provided in paragraph (e) of this section—

(1) If the move causing the opportunity to make an election under paragraph (a) or paragraph (b) of this section occurs on or after April 7, 1991, the time limit for making the election is 30 days after the effective date of the move.

(2) If the move causing the opportunity to make an election under paragraph (a) or paragraph (b) of this section occurs before April 7, 1991, the time limit for making the election is May 6, 1991.

(e) The Departments of Defense and Transportation may waive the time limits under procedures which they establish. An agency decision to grant or to deny a waiver of the time limit is final and not appealable to OPM. In establishing procedures for waiver of the time limits, the Departments of Defense and Transportation must observe the following restrictions:

(1) The time limits may be waived only if the employee acted with due diligence but was prevented by circumstance beyond his or her control from making an election within the time limit. The Departments of Defense and Transportation are responsible for determining what constitutes due diligence and circumstances beyond the employee's control.

(2) The procedures must not allow review under any employee grievance procedures, including those established by chapter 71 of title 5, United States

Code, and part 771 of title 5, Code of Federal Regulations.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

4. An authority citation for part 842 is added as set forth below, and all subpart authorities are removed:

Authority: 5 U.S.C. 8461(g); §§ 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); § 842.105 also issued under 5 U.S.C. 8402(c)(1); § 842.106 also issued under Section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; §§ 842.604 and 842.611 also issued under 5 U.S.C. 8417; § 842.607 also issued under 5 U.S.C. 8416 and 8417; § 842.614 also issued under 5 U.S.C. 8419; § 842.615 also issued under 5 U.S.C. 8418; subpart H also issued under 5 U.S.C. 1104.

Subpart A—Coverage

5. In § 842.102, the definition of "NAF employee" is added in alphabetical order to read as follows:

§ 842.102 Definitions.

* * * * *

NAF employee means an employee of an instrumentality described in section 2105(c) of title 5, United States Code.

* * * * *

6. In § 842.104, paragraph (g) is added to read as follows:

§ 842.104 Exceptions and options.

* * * * *

(g) An employee who has elected coverage under a retirement system for NAF employees in accordance with § 842.106 is excluded from FERS during that and all subsequent periods of service (including service as a reemployed annuitant).

7. Section 842.106 is added to read as follows:

§ 842.106 Elections of retirement coverage under the Portability of Benefits for Nonappropriated Fund Employees Act of 1990.

(a) An employee of the Department of Defense or the Coast Guard who has 5 years of civilian service creditable under FERS, who has not made an election under this section, who has not had an opportunity to make an election of retirement coverage under this paragraph and who moves, without a break in service of more than 3 days, to employment as a NAF employee in the Department of Defense (if the employment covered by FERS immediately prior to the move was with the Department of Defense) or the Coast Guard (if the employment covered by FERS immediately prior to the move was with the Coast Guard) may elect to remain covered by FERS. An employee who elects to remain covered by FERS under this paragraph will be covered by FERS during all periods of future service in a position not excluded from coverage by FERS, including any periods of service as a NAF employee. An election under this paragraph is irrevocable when received by the employing agency.

(b) A NAF employee who is a vested participant in a retirement system established for NAF employees (as the term "vested participant" is defined by that retirement system), who has not made an election under this section, who has not had an opportunity to make an election of retirement coverage under this paragraph, and who moves without a break in service of more than 3 days, to employment covered by FERS in the Department of Defense (if the employment immediately prior to the move was with a nonappropriated fund instrumentality of the Department of Defense) or the Coast Guard (if the employment immediately prior to the move was with a nonappropriated fund instrumentality of the Coast Guard) may elect to remain covered by the retirement system for NAF employees. An employee who makes an election under this paragraph is excluded from coverage under CSRS or FERS during that and all subsequent periods of employment, including any periods of service as a reemployed annuitant. An election under this paragraph is irrevocable when received by the employing agency.

(c) The Department of Defense will establish procedures for agencies to withhold and submit retirement contributions to the retirement systems for NAF employees who elect to be covered by a retirement system for NAF employees under paragraph (b) of this section and who are later employed by another agency.

(d) Except as provided in paragraph (e) of this section—

(1) If the move causing the opportunity to make an election under paragraph (a) or paragraph (b) of this section occurs on or after April 7, 1991, the time limit for making the election is 30 days after the effective date of the move.

(2) If the move causing the opportunity to make an election under paragraph (a) or paragraph (b) of this section occurs before April 7, 1991, the time limit for making the election is May 6, 1991.

(e) The Departments of Defense and Transportation may waive the time limits under procedures which they establish. An agency decision to grant or to deny a waiver of the time limit is final and not appealable to OPM. In establishing procedures for waiver of the time limits, the Departments of Defense and Transportation must observe the following restrictions:

(1) The time limits may be waived only if the employee acted with due diligence but was prevented by circumstance beyond his or her control from making an election within the time limit. The Departments of Defense and Transportation are responsible for determining what constitutes due diligence and circumstances beyond the employee's control.

(2) The procedures must not allow review under any employee grievance procedures, including those established by chapter 71 of title 5, United States Code, and part 771 of title 5, Code of Federal Regulations.

[FR Doc. 91–2866 Filed 2–6–91; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 90–242]

Oriental Fruit Fly; Removal of Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that removed the Oriental fruit fly regulations that designated a portion of Los Angeles County in California as a quarantined area and imposed restrictions on the interstate movement of regulated articles from that area. The regulations were established to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. We have determined that the Oriental fruit fly has been eradicated from Los Angeles County, California, and that the regulations are no longer necessary.

EFFECTIVE DATE: March 11, 1991.

FOR FURTHER INFORMATION CONTACT: Milton C. Holmes, Senior Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8247.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective September 28, 1990, and published in the Federal Register on October 3, 1990 (55 FR 40375–40376, Docket No. 90–193), we

amended the "Domestic Quarantine Notices" in 7 CFR part 301 by removing the Oriental fruit fly regulations (7 CFR 301.93 through 301.93–10, referred to below as the regulations). The regulations quarantined an area of Los Angeles County, California—in the West Covina area—and imposed restrictions on the interstate movement of regulated articles from the quarantined area to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. The regulations also designated soil, and a large number of fruits, nuts, vegetables, and berries, as regulated articles.

We have determined that Oriental fruit fly has been eradicated from Los Angeles County, California, and that the regulations are no longer necessary. Comments on the interim rule were required to be received on or before December 3, 1990. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

This regulation affects the interstate movement of previously regulated articles from a portion of Los Angeles County, California. The small entities that may be affected by this regulation are approximately 120 fruit/produce markets, 20 nurseries, and 146 retail fruit/produce vendors. These entities comprise less than 1 percent of the total number of similar enterprises operating in the State of California.

It appears that most of these small entities sold previously regulated articles primarily for local intrastate, not interstate markets. The sale of these articles will therefore remain unaffected by the regulatory provisions we have removed. Also, many of these entities sold other items in addition to the previously regulated articles so that the effect, if any, of this regulation on these entities will be minimal.

The effect of this regulation on those entities that did move previously regulated articles interstate was minimized by the availability of various treatments specified in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations. The specified treatments, in most cases, allowed these small entities to move previously regulated articles interstate with very little additional cost.

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

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 301

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

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule amending 7 CFR 301.93 *et seq.* that was published at 55 FR 40375–40376 on October 3, 1990.

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

Done in Washington, DC, this 1st day of February 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–2795 Filed 2–6–91; 8:45 am]

BILLING CODE 3410–34–M

7 CFR Part 301

[Docket No. 90–244]

Witchweed Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the list of suppressive areas under the witchweed quarantine and regulations by adding and deleting areas in North Carolina and South Carolina. The change affects 13 counties in North Carolina and 3 counties in South Carolina. This action was necessary in order to impose certain restrictions on the interstate movement of regulated articles to prevent the artificial spread of witchweed and to delete unnecessary restrictions on the interstate movement of regulated articles.

EFFECTIVE DATE: March 11, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas G. Flanigan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 646, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective on October 17, 1990 (55 FR 41983–41987, Docket Number 90–092), we amended the witchweed quarantine and regulations by adding areas in Craven, Duplin, Greene, Lenoir, Pender, and Pitt Counties in North Carolina, and areas in Florence and Horry Counties in South Carolina to the list of suppressive areas in § 301.80–2a of the regulations.

We also amended the list of suppressive areas by removing areas in Columbus, Craven, Cumberland, Duplin, Greene, Harnett, Hoke, Lenoir, Pender, Richmond, Sampson, and Wayne Counties in North Carolina, and areas in Florence, Horry, and Marlboro Counties in South Carolina from § 301.80–2a of the regulations. As a result of these actions, there are no longer any regulated areas in Hoke and Richmond Counties, North Carolina, or in Marlboro County, South Carolina.

Comments on the interim rule were required to be received on or before December 17, 1990. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

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 estimated annual effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

This action affects the interstate movement of regulated articles from specified areas in North Carolina and South Carolina. Based on information compiled by the Department, we have determined that approximately 281,000 small entities move these articles interstate from North Carolina and South Carolina. However, this action affects only 67 of these entities, by removing 50 entities from regulation and placing 9 new entities under regulation. We have determined that the 50 deregulated entities will realize combined annual savings of approximately $3,350, or an average of $67.00 each, in regulatory and control costs. We estimate that the 9 newly regulated entities will need to invest approximately $135 each, per year, in order to comply with our regulations.

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

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

The 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 7 CFR Part 301

Agricultural commodities, Plant pests, Plants (Agriculture), Quarantine, Transportation, Witchweed.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule amending 7 CFR 301.80–2a that was published at 55 FR 41983–41987 on October 17, 1990.

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

Done in Washington, DC, this 1st day of February 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–2796 Filed 2–6–91; 8:45 am]

BILLING CODE 3410–34–M

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7 CFR Part 301

[Docket No. 90–249]

Imported Fire Ant Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the imported fire ant quarantine and regulations by designating all or portions of the following as generally infested areas: 1 county in Alabama, 1 county in Arkansas, 14 counties in North Carolina, 1 county in Oklahoma, 2 counties in South Carolina, and 1 county in Texas. This action expands the regulated areas and imposes certain restrictions on the interstate movement of regulated articles from those areas. This action is necessary to prevent the artificial spread of the imported fire ant. We are also correcting an editorial error that inadvertently caused a portion of Mason County in Texas to be listed as a generally infested area.

DATES: Interim rule effective February 7, 1991. Consideration will be given only to comments received on or before April 8, 1991.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90–249. Comments received may be inspected at USDA, Room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Milton C. Holmes, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8247.

SUPPLEMENTARY INFORMATION:

Background

The imported fire ant quarantine and regulations (contained in 7 CFR 301.81 *et seq.*, and referred to below as the regulations) restrict the interstate movement of regulated articles from regulated areas in designated States to prevent the artificial spread of the imported fire ant. The imported fire ant (*Solenopsis* spp.) is an insect that interferes with farming operations, can cause damage to certain crops, and is a pest of livestock, pets, and people in rural and urban areas. The quarantined States include Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, and Texas.

Under the regulations, an area is designated as a regulated area if the imported fire ant has been found there, or if reason exists to believe the imported fire ant is present there.

Regulated areas are designated as either generally infested areas or suppressive areas. Suppressive areas are those areas where eradication of the imported fire ant is being undertaken as an objective. Generally infested areas are all other regulated areas.

Restrictions are imposed on the interstate movement of regulated articles from regulated areas to prevent the artificial movement of the imported fire ant into noninfested areas, and to prevent further infestation of suppressive areas.

We are amending § 301.81–2a by designating all or portions of the following counties as generally infested areas: Madison County in Alabama; Jefferson County in Arkansas; Anson, Cumberland, Duplin, Hoke, Hyde, Lenoir, Martin, Pitt, Richmond, Robeson, Sampson, Scotland, Tyrrell, and Washington Counties in North Carolina; Love County in Oklahoma; Abbeville and Union Counties in South Carolina; and Webb County in Texas.

See the rule portion of this document for specific descriptions of the newly designated infested areas.

This action is necessary because surveys conducted by inspectors of the United States Department of Agriculture and officials of State agencies have

established that the imported fire ant has spread to these areas. Eradication of the imported fire ant is not being undertaken as an objective in these areas, and therefore, as an emergency measure, we are adding them to the list of imported fire ant generally infested areas.

Miscellaneous

We are correcting an editorial error that inadvertently caused a portion of Mason County in Texas to be listed as a generally infested area.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that a situation exists that warrants publication of this rule without prior opportunity for public comment. Because the imported fire ant has been found in additional areas of the United States and could be spread artifically from these areas to noninfested areas of the United States, it is necessary to act immediately to control its spread.

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

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

This action affects the interstate movement of regulated articles from specified areas in Alabama, Arkansas, North Carolina, Oklahoma, South Carolina, and Texas. Thousands of small entities move these articles interstate from these States, and many more thousands of small entities move these articles interstate from other States.

However, based on information compiled by the Department, we have determined that approximately 149 small entities within the newly regulated areas move articles interstate from the specified areas in those States. Further, the overall economic impact from this action is estimated to be approximately $20,000.

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.

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

This interim rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Imported fire ant, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR 301.81 is amended as follows:

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

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

§ 301.81–2a [Amended]

2. Section 301.81–2a is amended by adding, in alphabetical order, the following counties in North Carolina, Oklahoma, South Carolina, and Texas:

§ 301.81–2a Regulated areas; suppressive and generally infested areas.

* * * * *

North Carolina

(1) *Generally infested areas.*

* * * * *

Cumberland County. That portion of the county bounded by a line beginning at the intersection of the South River and the Cumberland-Bladen County line; then west along this county line to its intersection with the Cape Fear River; then north along this river to its intersection with U.S. Highway 301; then south along this highway to its intersection with State Secondary Road 1007 (Owens Drive); then northwest along this road to its intersection with U.S. Highway 401; then west along this highway to its intersection with the Cumberland-Hoke County line, then northwest along this county line to its intersection with the Fort Bragg Military Reservation; then northeast along this line to its intersection with State Secondary Road 1610; then east along this road to its intersection with U.S. Highway 401; then north along this road to its intersection with State Secondary Road 1112; then southeast along this road to its merger with State Secondary Road 2807; then east along this road to its intersection with the Cape Fear River; then following a straight line from this intersection to the intersection of State Secondary Road Road 1720 and State Secondary Road 1719; then northeast and southeast along State Secondary Road 1719 to its intersection with U.S. Highway 301; then south along this highway to its intersection with State Secondary Road 1863; then east along this road to its intersection with Interstate 95; then east on U.S. Highway 13 to its intersection with State Secondary Road 1818; then southeast along this road to its intersection with State Secondary Road 1006; then northeast along this road to its intersection with the South River; then southeast along this river to the point of beginning.

* * * * *

Hoke County. That portion of the county bounded by a line beginning at the intersection of the Lumber River and State Secondary Road 1203; then east along this road to its intersection with State Secondary Road 1202; then northeast along this road to its intersection with North Carolina Highway 211; then southeast along this highway to its junction with U.S. Highway 401 Business; then east along this highway to its junction with North Carolina Highway 20; then southeast along this highway to its intersection with the Hoke-Robeson County line; then southwest along this county line to its intersection with the Lumber River; then north along this river to the point of beginning.

* * * * *

Martin County. That portion of the county bounded by a line beginning at the intersection of State Secondary Road 1001 and the Beaufort-Martin County line; then northeast along this county line to its junction with State Secondary Road 1114; then east along this road to its intersection with State Secondary Road 1516; then northeast along this road to its junction with U.S. Highway 64; then east along this highway to its junction with the Washington-Martin County

line; then south along this county line to its junction with the Beaufort-Martin County line; then west along this county line to the point of beginning.

* * * * *

Pitt County. That portion of the county bounded by a line beginning at the intersection of the Greene-Pitt County line and State Secondary Road 1110; then east along this road to its junction with State Secondary Road 1113; then east along this road to its intersection with State Highway 11; then north along this highway to its intersection with State Highway 102; then east along this highway to its junction with State Secondary Road 1723; then north along this road to its junction with State Secondary Road 1700; then northeast along this road to its junction with State Highway 33; then west along this highway to its junction with U.S. Highway 13; then north along this highway to its junction with State Highway 903; then east along this highway to its junction with State Secondary Road 1517; then east along this road to its junction with State Secondary Road 1538; then north along this road to its junction with State Secondary Road 1542; then east along this road to its junction with State Highway 30; then south along this highway to its junction with State Secondary Road 1555; then east along this road to its junction with State Secondary Road 1550; then north along this road to its junction with State Secondary Road 1552; then east along this road to its junction with the Beaufort-Pitt County line; then south along this county line to its intersection with the Craven-Pitt County line; then west along this county line to its intersection with the Lenoir-Pitt County line; then west along this county line to its intersection with the Greene-Pitt County line; then north along this county line to the point of beginning.

* * * * *

Tyrrell County. That portion of the county bounded by a line beginning at the intersection of the Washington-Tyrrell County line and U.S. Highway 64; then east along this highway to its intersection with the Dare-Tyrrell County line; then south along this county line to its junction with the Hyde-Tyrrell County line; then west and south along this county line to its junction with the Washington-Tyrrell County line; then north along this county line to the point of beginning.

* * * * *

Washington County. That portion of the county bounded by a line beginning at the intersection of the Beaufort/Martin/Washington County lines; then northeast along the Martin-Washington County line to its intersection with U.S. Highway 64; then east along this highway to its junction with State Secondary Road 1126; then east along this road to its junction with State Secondary Road 1155; then east along this road to its junction with State Secondary Road 1161; then east along this road to its intersection with the Tyrrell-Washington County line; then south along this county line to its junction with the Hyde-Washington County line; then west along this county line to its junction with the Beaufort-Washington County line; then west along this county line to the point of beginning.

* * * * *

Oklahoma

(1) *Generally infested areas.*

* * * * *

Love County. The entire county.

* * * * *

South Carolina

(1) *Generally infested areas.*

Abbeville County. That portion of the county bounded by a line beginning at the intersection of the Abbeville-McCormick County line and South Carolina Primary Highway 28; then north along this highway to its intersection with the Abbeville-Anderson County line; then southwest along this county line to its junction with the Georgia State line; then southeast along this State line to its junction with the Abbeville-McCormick County line; then northeast and east along this county line to the point of beginning.

* * * * *

Texas

(1) *Generally infested areas*

* * * * *

Webb County. That portion of the county lying within the corporate city limits of the city of Laredo.

* * * * *

§ 301.81-2a [Amended]

3. Section 301.81–2a is amended further by revising the entries for the following counties in Alabama, Arkansas, North Carolina, South Carolina, and Texas under paragraph (1) to read as follows:

* * * * *

Alabama

(1) *Generally infested areas.*

The entire State.

* * * * *

Arkansas

(1) *Generally Infested areas.*

* * * * *

Jefferson County. That portion of the county bounded by a line beginning at the intersection of the Jefferson-Grant County line and the southern boundary line of T. 5 S.; then east along this township line to its intersection with U.S. Highway 79; then northeast along this highway to its junction with State Highway 88; then southeast along this highway to its intersection with the eastern boundary line of R. 7 W.; then south along this range line to its junction with the Jefferson-Lincoln County line; then south and west along this county line to the Jefferson-Cleveland County line; then west along this county line to the Jefferson-Grant County line; then north along this county line to the point of beginning. The incorporated city limits of Pine Bluff and Altelmer are included.

* * * * *

North Carolina

(1) *Generally infested areas.*

Anson County. That portion of the county bounded by a line beginning at the intersection of the Pee Dee River and State Secondary Road 1756; then southwest along this road to its intersection with State Secondary Road 1744; then south along this road to its intersection with State Secondary Road 1730; then west along this road to its intersection with State Secondary Road 1801; then south along this road to its intersection with U.S. Highway 74; then west along this highway to its intersection with the Anson-Union County line; then south along this county line to the North Carolina-South Carolina State line; then east along this State line to its intersection with the Pee Dee River; then north along this river to the point of beginning.

* * * * *

Duplin County. That portion of the county bounded by a line beginning at the intersection of the Sampson-Duplin County line and State Secondary Road 1335; then east along this road to its junction with State Secondary Road 1301; then southeast along this road to its junction with State Secondary Road 1300; then east along this road to its junction with State Secondary Road 1004; then north along this road to its junction with State Secondary Road 1511; then northeast along this road to its junction with State Secondary Road 1306; then northeast along this road to its junction with State Highway 903; then north along this highway to its junction with the Lenoir-Duplin County line; then south along this county line to its junction with the Jones-Duplin County line; then south along this county line to its junction with the Onslow-Duplin County line; then south along this county line to the Pender-Duplin County line; then west along this county line to the Sampson-Duplin County line; then north along this county line to the point of beginning.

Hyde County. The entire county.

* * * * *

Lenoir County. That portion of the county bounded by a line beginning at the intersection of the Duplin-Lenoir County line and State Highway 903; then north along this highway to its junction with State Highway 1151; then northeast along this highway to its junction with State Highway 55; then east along this highway to its intersection with State Secondary Road 1152; then north along this road to its junction with State Secondary Road 1308; then northeast along this road to its junction with State Secondary Road 1307; then northeast along this road to its junction with State Secondary Road 1324; then east along this road to its junction with U.S. Highway 70; then east along this highway to its junction with State Secondary Road 1546; then north along this road to its junction with State Secondary Road 1545; then north along this road to its junction with State Secondary Road 1544; then northwest along this road to its junction with State Secondary Road 1555; then northeast along this road to its junction with State Route 1001; then east along this route to its junction with U.S. Highway 258; then north along this highway to its intersection with the Greene-Lenoir County line; then east along this county line to the Pitt-Lenoir County line; then southeast along

this county line to the Craven-Lenoir County line; then southwest along this county line to its junction with the Jones-Lenoir County line; then southwest along this county line to the Duplin-Lenoir County line; then north along this county line to the point of beginning.

* * * * *

Richmond County. That portion of the county bounded by a line beginning at the junction of the Little River and the Pee Dee River; then northeast along the Little River to its junction with State Secondary Road 1148; then south along this road to its junction with State Secondary Road 1151; then northeast along this road to its junction with North Carolina Highway 73; then southeast along this highway to its junction with U.S. Highway 220; then south along this highway to its junction with U.S. Highway 74; then southeast along this highway to its junction with the Richmond-Scotland County line; then south along this county line to its junction with the North Carolina-South Carolina State line; then west along this State line to its junction with the Pee Dee River; then north along this river to the point of beginning.

Robeson County. That portion of the county bounded by a line beginning at the intersection of the Hoke-Robeson County line and U.S. Highway 20; then east and northeast along this highway to its intersection with the Robeson-Bladen County line; then south along this county line to its junction with the Robeson-Columbus County line; then south along this county line to its junction with the North Carolina-South Carolina State line; then west along this State line to its junction with the Robeson-Scotland County line; then north and west along this county line to its junction with the Robeson-Hoke County line; then northeast and north along this county line to the point of beginning.

Sampson County. That portion of the county bounded by a line beginning at the intersection of the Cumberland-Sampson County line and State Secondary Road 1006; then east along this road to its intersection with State Secondary Road 1832; then southeast along this road to its junction with U.S. Highway 421; then south along this highway to its junction with State Highway 24; then east along this highway to its junction with U.S. Highway 701; then north along this highway to its junction with State Highway 403; then east along this highway to its intersection with the Duplin-Sampson County line; then south along this county line to its junction with the Pender-Sampson County line; then west along this county line to its junction with the Bladen-Sampson County line; then north along this county line to its junction with the Cumberland-Sampson County line; then north along this county line to the point of beginning.

Scotland County. That portion of the county bounded by a line beginning at the intersection of the Scotland-Richmond County line and U.S. Highway 74; then southeast along this highway to its junction with State Secondary Road 1319; then northeast along this road to its junction with State Secondary Road 1324; then north and east along this road to its junction with State Secondary Road 1412; then north along this road to its junction with the Scotland-Hoke County line; then south along this county line to its junction with the Scotland-Robeson County line; then southwest along this county line to its junction with the North Carolina-South Carolina State line; then northwest along this State line to its junction with the Richmond-Scotland County line; then north along this county line to the point of beginning.

* * * * *

South Carolina

(1) *Generally infested areas.*

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Union County. The entire county.

* * * * *

Texas

(1) *Generally infested areas.*

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Mason County. That portion of the county bounded by a line beginning at the intersection of Texas Ranch Road 152 and the Mason-Llano County line; then south along this county line to its junction with the Mason-Gillespie County line; then west along this county line to its junction with Texas Ranch Road 783; then north along this road to its junction with U.S. Highway 87; then southeast along this highway to its intersection with Texas Ranch Road 152; then north along this road to the point of beginning.

* * * * *

Done in Washington, DC, this 1st day of February 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–2794 Filed 2–6–91; 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Part 78

[Docket No. 90–241]

Validated Brucellosis-Free States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the brucellosis regulations concerning the interstate movement of swine by adding North Carolina to the list of validated brucellosis-free States. We have determined that North Carolina meets the criteria for classification as a validated brucellosis-free State. This action relieves certain restrictions on moving breeding swine from North Carolina.

EFFECTIVE DATE: March 11, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Delorias M. Lenard, Senior Staff Veterinarian, Swine Diseases Staff, VS, APHIS, USDA, Room 735, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7767.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective October 17, 1990 (55 FR 41994–41995, Docket Number 90–162), we amended the regulations in 9 CFR part 78 that prescribe conditions for the interstate movement of cattle, bison, and swine, by adding North Carolina to the list of validated brucellosis-free States in § 78.43.

Comments on the interim rule were required to be received on or before December 17, 1990. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

Herd owners in North Carolina are affected by this action, which allows breeding swine to be moved interstate from North Carolina without being tested for brucellosis. Approximately 1,100 sows are tested annually for brucellosis, at an average cost to the seller of $5.00 per test, in order to be eligible for interstate movement from North Carolina. Using these numbers, we estimate that removing the testing requirement will result in a potential annual savings of $5,500 for swine herd owners in North Carolina. Of the approximately 3,000 swine herd owners nationwide who regularly ship breeding swine interstate, 92 regularly ship breeding swine interstate from North Carolina. All of these herd owners would be considered small entities.

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

This rule contains 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 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR 78.43 that was published at 55 FR 41994–41995 on October 17, 1990.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 1st day of February 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–2797 Filed 2–6–91; 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Part 78

[Docket 90–243]

Validated Brucellosis-Free States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the brucellosis regulations concerning the interstate movement of swine by removing New Jersey from the list of validated brucellosis-free States. We have determined that New Jersey does not meet the criteria for classification as a validated brucellosis-free State. This action imposes certain restrictions on the interstate movement of breeding swine from New Jersey.

EFFECTIVE DATE: March 11, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Delorias M. Lenard, Senior Staff Veterinarian, Swine Diseases Staff, VS, APHIS, USDA, Room 735, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7767.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective October 19, 1990 (55 FR 42353–42354, Docket Number 90–161), we amended the regulations in 9 CFR part 78 that prescribe conditions for the interstate movement of cattle, bison and swine, by removing New Jersey from the list of validated brucellosis-free States in § 78.43.

Comments on the interim rule were required to be received on or before December 18, 1990. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

Herd owners in New Jersey are affected by this action. The termination of validated brucellosis-free status means that breeding swine must be tested for brucellosis prior to being allowed to move from New Jersey. Approximately 90 sows will be tested for brucellosis annually in order to be eligible for interstate movement from New Jersey at an average cost to the seller of $4.75 per test. Using these numbers, we estimate that the testing requirement will result in an approximate cost of $427.50 for swine herd owners in New Jersey. Of the approximately 3,000 swine herd owners nationwide who regularly ship breeding swine interstate, 20 herds owners regularly ship breeding swine interstate from New Jersey. All 20 herd owners would be considered small entities.

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

This rule contains 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 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR 78.43 that was published at 55 FR 42353–42354 on October 19, 1990.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC this 1st day of February 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–2798 Filed 2–6–91; 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Part 78

[Docket No. 90–246]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Arkansas from Class B to Class A. We have determined that Arkansas meets the standards for Class A status. This action relieves certain restrictions on the interstate movement of cattle from Arkansas.

EFFECTIVE DATE: March 11, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. John D. Kopec, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6188.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective October 19, 1990, and published in the **Federal Register** on October 25, 1990 (55 FR 42954–42956, Docket Number 90–210), we amended the regulations in 9 CFR part 78 that provide a system for classifying States or portions of States according to the rate of brucella infection present and the general effectiveness of a brucellosis control and eradication program. We removed Arkansas from the list of Class B States in § 78.41(c) and added it to the list of Class A States in § 78.41(b).

Comments on the interim rule were required to be received on or before December 24, 1990. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million, will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Arkansas from Class B to Class A reduces certain testing and other requirements governing the interstate movement of cattle from Arkansas. However, cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The principal group affected would be the owners of noncertified herds in Arkansas not known to be affected with brucellosis who seek to sell cattle.

There are an estimated 34,000 herds in Arkansas, most of which are owned by small entities that potentially would be affected by this rule. During fiscal year 1989 Arkansas tested 226,394 eligible cattle at saleyards. We estimate that approximately 12 percent of this testing was done to qualify cattle for interstate movement for purposes other than slaughter. This testing costs approximately $3.50 per head. Since herd sizes vary, larger herds will accumulate more savings than smaller herds. Also, not all herd owners will choose to market their cattle in a way that accrues these cost savings. The overall effect of this rule on small entities should be to provide very small economic benefit.

Therefore, we believe that changing Arkansas' brucellosis status will not significantly affect market patterns, and will not have a significant economic impact on the small entities affected by this rule.

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

This rule contains 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 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 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR 78.41 (a) and (b) that was published at 55 FR 42954–42956 on October 25, 1990.

Authority: 21 U.S.C. 111—114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 1st day of February 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–2799 Filed 2–6–91; 8:45 am]

BILLING CODE 3410–34–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 90]

Staff Accounting Bulletin No. 90

AGENCY: Securities and Exchange Commission.

ACTION: Publication of staff accounting bulletin.

SUMMARY: The Commission has authorized the staff to publish this staff accounting bulletin which sets forth staff interpretations on various matters relating to Laventhol & Horwath ("L&H"), a public accounting firm, which filed for bankruptcy on November 21, 1990 and ceased to perform audit and accounting services. These interpretations are intended to provide guidance as to the disclosure to be provided by, and the relief to be granted to, registrants who are former clients of L&H. As a result of L&H's actions, a number of public reporting audit clients will be unable to file a manually signed audit report pursuant to Rule 2–02 of Regulation S–X and, in connection with registered public securities offerings, a manually signed accountants' consent pursuant to section 7 of the Securities Act of 1933 and Rule 436 of Regulation C thereunder.

DATES: January 31, 1991.

FOR FURTHER INFORMATION CONTACT: Teresa E. Iannaconi, Division of Corporation Finance (202–272–2553); John M. Riley, Office of the Chief Accountant (202–272–2130); or Lawrence A. Friend, Division of Investment Management (202–272–7716), Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission has authorized the staff to issue this staff accounting bulletin setting forth interpretations and practices to be followed by the Division of Corporation Finance, the Office of the Chief Accountant and, the Division of Investment Management in administering the disclosure requirements of the Federal Securities laws with respect to registrants who are former clients of Laventhol & Horwath,

a public accounting firm that filed a bankruptcy petition on November 21, 1990, and ceased to perform audit and accounting services.

Dated: January 31, 1991.

Margaret H. McFarland,

Deputy Secretary.

PART 211—[AMENDED]

Accordingly, part 211 of title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 90 to the table found in subpart B.

Staff Accounting Bulletin No. 90

The staff hereby adds section L to Topic 1 of the staff accounting bulletin series. Topic 1–L indicates the disclosure to be made and relief that may be sought by registrants who are former clients of Laventhol & Horwath, a public accounting firm, which filed a bankruptcy petition on November 21, 1990.

L. Specific Matters Relating to the Bankruptcy of an Accounting Firm Which Had Public Company Clients

Facts: On November 21, 1990, Laventhol & Horwath ("L&H"), a certified public accounting firm organized under Pennsylvania law in the form of a general partnership, filed in the United States Bankruptcy Court, Southern District of New York, a bankruptcy petition under Chapter 11 of the United States Code (the "Bankruptcy Code"). The firm no longer employs any certified public accountants and has stopped performing any audit and accounting services. As a result of these actions, L&H is unable to manually sign the audit report required to be included in filings with the Commission. Further, L&H, since that date, no longer performs the subsequent events audit procedures normally undertaken in connection with reissuance of an auditor's report and execution of an accountant's consent required by section 7 of the Securities Act of 1933 ("Securities Act") and Rule 436 of Regulation C thereunder.

Question 1: What disclosure should a registrant provide in registration statements under the Securities Act of 1933 that contain an L&H audit report? In what documents must such disclosure appear?

Response 1. General Statement: Although the responsibility for full and complete disclosure of the material facts concerning an issuer, and the contents of the disclosure, will be the responsibility of each issuer, the staff will be available to answer inquiries regarding other registrants who have addressed these matters, and the staff intends to make public, as a supplement to this Bulletin, responses to such inquiries. Further, while the exact content of the disclosure may vary depending on facts and circumstances applicable to each of the firm's former public company audit clients, the following is intended to provide companies guidance in meeting their disclosure obligations under the federal securities laws.

Response 2. Registration Statements and Post-Effective Amendments which Became Effective Prior to November 21, 1990, the Date L&H Filed its Bankruptcy Petition and Contain Both an L&H Audit Report (Physically or Through Incorporation by Reference) For the Most Recent Fiscal Year and Consent: The top margin of the front page of the latest dated prospectus or supplement to be used in connection with a securities offering should prominently set forth summary disclosure to investors concerning the L&H bankruptcy and its effect on investors ("summary disclosure"). The summary disclosure on the cover page should be clearly highlighted and set off from other disclosure contained on such page. For example, the summary disclosure may be printed within a distinctive border. Where the prospectus is subsequently reprinted, this summary disclosure also should be set forth (1) in the presentation of summary financial information in the prospectus; (2) on the L&H audit report page; and (3) where the registration statement permits financial statements to be incorporated by reference, in the prospectus section incorporating the financial statements covered by the L&H audit report.

The summary should advise investors of L&H's bankruptcy on November 21, 1990, and its discontinuance of audit and accounting services. As part of the summary registrants also should consider advising investors of the effect of the bankruptcy filing on investors' rights to sue and recover damages from L&H for material misstatements or omissions, if any, in the registration statement and prospectus, including the financial statements. Consideration also should be given to including a cross reference in the summary to a discussion of the L&H bankruptcy filing and its effect on investors.

Consideration should be given to addressing the matters outlined below in the discussion of the L&H bankruptcy. This discussion may be set forth in a supplement to a prospectus already in use.

1. The fact of the L&H bankruptcy, the withdrawal of substantially all the partners, and the consequent discontinuance of L&H's audit and accounting services;

2. The effect of the L&H bankruptcy on investors' rights of action, if any, against L&H, including the potential for claims to be barred under the Bankruptcy Code regardless of the merits;

3. The bankruptcy court's jurisdiction over investors' legal actions, if any, against L&H and the requirements to file claims within a specified time period;

4. Ranking of investors' claims, if any, under the Bankruptcy Code; and

5. The liability, if any, of individual general partners to investors, as well as any limitations on such liability due to bankruptcy or other equitable laws, and Pennsylvania general partnership law.

Response 3. Registration Statements and Post-Effective Amendments Filed Prior to November 21, 1990, the Date of the L&H Bankruptcy Filing, Which Become Effective After November 21, 1990 and Contain Both an L&H Audit Report (Physically or Through Incorporation by Reference) for the Most Recent Fiscal Year and Consent: The top margin of the front page of the prospectus should prominently set forth summary disclosure to investors concerning the L&H bankruptcy and its effect on investors ("summary disclosure"). The summary disclosure on the cover page should be clearly highlighted and set off from other disclosure contained on such page. For example, the summary disclosure may be printed within a distinctive border. The summary disclosure also should be set forth (1) in the presentation of summary financial information in the prospectus; (2) on the L&H audit report page; and (3) where the registration statement permits financial statements to be incorporated by reference, in the prospectus section incorporating the financial statements covered by the L&H audit report. If the prospectus is subsequently updated by means of a supplement, the summary disclosure should be set forth on the top margin of the latest dated supplement.

The summary should advise investors of L&H's bankruptcy on November 21, 1990, and its discontinuance of audit and accounting services. The summary also should advise of the effect of the bankruptcy filing on investors' rights to sue and recover damages from L&H for material misstatements or omissions, if any, in the registration statement and prospectus, including the financial statements. The summary should cross reference to a discussion of the L&H bankruptcy filing and its effect on investors.

The discussion of the L&H bankruptcy should include the matters listed below:

1. The fact of the L&H bankruptcy, the withdrawal of substantially all the partners, and the consequent discontinuance of L&H's audit and accounting services;

2. Nonperformance of subsequent events audit procedures subsequent to the date of the L&H consent;

3. The effect of the L&H bankruptcy on investors' rights of action, if any, against L&H, including the potential for claims to be barred under the Bankruptcy Code regardless of the merits;

4. The bankruptcy court's jurisdiction over investors' legal actions, if any, against L&H and the requirements to file claims within a specified time period;

5. Ranking of investors' claims, if any, under the Bankruptcy Code; and

6. The liability, if any, of individual general partners to investors, as well as any limitations on such liability due to bankruptcy or other equitable laws, and Pennsylvania general partnership law.

Response 4. Registration Statements and Post-Effective Amendments Updating Financial Statements Filed After November 21, 1990, the Date of the L&H Bankruptcy Filing, that Contain a Copy of an L&H Audit Report (Physically or Through Incorporation by Reference) for the Most Recent Fiscal Year: The top margin of the front page of the prospectus should prominently set forth summary disclosure to investors concerning the L&H bankruptcy and its effect on investors ("summary disclosure"). The summary disclosure on the cover page should be clearly highlighted and set off from other disclosure contained on such page. For example, the summary disclosure may be printed within a distinctive border. The summary disclosure also should be set forth (1) in the presentation of summary financial information in the prospectus; (2) on the L&H audit report page; and (3) where the registration statement permits financial statements to be incorporated by reference, in the prospectus section incorporating the financial statements covered by the L&H audit report. If the prospectus is subsequently updated by means of a supplement, the summary disclosure should be set forth on the top margin of the latest dated supplement.

The summary should advise investors of L&H's bankruptcy on November 21, 1990, and its discontinuance of audit and accounting services. The summary also should advise investors of the effect of the bankruptcy filing on investors' rights to sue and recover damages from L&H for material misstatements or omissions, if any, in the registration statement and prospectus, including the financial statements. Further, the summary should advise that L&H has not consented to the use of its audit report and the consequent limitations on investors' rights to sue L&H under section 11 of the Securities Act for false and misleading financial statements, if any, and the effect, if any, of the lack of an L&H consent on the due diligence defense of directors and officers. The summary should cross reference to a discussion of the L&H bankruptcy filing and its effect on investors.

The discussion of the L&H bankruptcy should include the matters listed below:

1. The fact of the L&H bankruptcy, the withdrawal of substantially all the partners, and the consequent discontinuance of L&H's audit and accounting services;

2. Limitations on investors' rights to sue L&H under section 11 of the Securities Act and the effect, if any, of the lack of an L&H consent on the due diligence defense of directors and officers;

3. Nonperformance of subsequent events audit procedures subsequent to the date of the L&H audit report;

4. The effect of the L&H bankruptcy on investors' rights of action, if any, against L&H, including the potential for claims to be barred under the Bankruptcy Code regardless of the merits;

5. The bankruptcy court's jurisdiction over investors' legal actions, if any, against L&H and the requirements to file claims within a specified time period;

6. Ranking of investors' claims, if any, under the bankruptcy code; and

7. The liability, if any, of individual general partners to investors, as well as any limitations on such liability due to bankruptcy or other equitable laws, and Pennsylvania general partnership law.

Response 5. Registration Statements, Post-Effective Amendments and Prospectuses Where L&H is not the Accountant for the Most Recent Fiscal Year Ended, but Has Audited One or More of the Prior Fiscal Years: In the presentation of summary financial information in the prospectus, on the L&H audit report, and where the registration statement permits financial statements to be incorporated by reference, in the prospectus section incorporating the financial statements covered by the L&H audit report, there should be prominently set forth summary disclosure advising investors of L&H's bankruptcy on November 21, 1990, and its discontinuance of audit and accounting services. The summary also should advise of the effect of the bankruptcy filing on investors' legal rights to sue and recover damages from L&H for material misstatements or omissions, if any, in the registration statement and prospectus, including the financial statements. Where L&H has not consented to the use of its audit report, the summary should advise of the limitations on investors' rights to sue L&H under section 11 of the Securities Act for false and misleading financial statements, if any, and the effect, if any, of the lack of an L&H consent on the due diligence defense of directors and officers.

With respect to registration statements and post-effective amendments that became effective prior to November 21, 1990 and contain an L&H audit report for one or more prior fiscal years, the summary disclosure should be set froth on the top margin of the front page of the latest dated prospectus or supplement. Where the prospectus is subsequently reprinted, the summary disclosure also should be included in the presentation of summary financial information, on the L&H audit report, and where the registration statement permits financial statements to be incorporated by reference, in the prospectus section incorporating the financial statements covered by the L&H audit report.

Question 2: What disclosure should a registrant provide in filings under the Securities Exchange Act of 1934 that contain an L&H audit report? In what documents must such disclosure appear?

Response 1. General Statement: Although the responsibility for full and complete disclosure of the material facts concerning an issuer, and the contents of the disclosure, will be the responsibility of each issuer, the staff will be available to answer inquiries regarding other registrants who have addressed these matters, and the staff intends to make public, as a supplement to this Bulletin, responses to such inquiries. Further, while the exact content of the disclosure may vary depending on facts and circumstances applicable to each of the firm's former public company audit clients, the following is intended to provide companies guidance in meeting their disclosure obligations under the federal securities laws.

Response 2. Item 4 to a Current Report on Form 8–K; Item 9 to an Annual Report on Form 10–K; and Item 9 of Schedule 14A: All registrants subject to the reporting requirements of section 13(a) or section 15(d) and required to file an Item 4 to Form 8–K, should include in response to Item 304(a)(1)(i) of Regulation S–K disclosure of the L&H bankruptcy, the withdrawal of substantially all L&H's general partners and the firm's cessation of audit and accounting services. Similar disclosure

also should be provided, pursuant to Instruction 1 to Item 304, in response to Item 9 of Schedule 14A and, unless "previously reported" (as that term is defined in Rule 12b–2 under the Exchange Act), in response to Item 9 of Form 10–K.

Response 3. Transactional Documents Filed Subsequent to November 21, 1990 (the Date L&H Filed its Bankruptcy Petition) that Contain an L&H Audit Report: Transactional documents (*e.g.*, proxy statements including financial statements required by Item 13 or Item 14 to Schedule 14A) containing an L&H audit report filed under the Exchange Act after November 21, 1990 should contain prominent disclosure advising investors of L&H's bankruptcy on November 21, 1990, and its discontinuance of audit and accounting services. The disclosure also should advise investors of the effect of the bankruptcy filing on investors' rights to sue and recover damages from L&H for material misstatements or omissions, if any, in the documents filed, including the financial statements. The disclosure should be set forth on the page of the L&H audit report, and in the section of the document that incorporates by reference the company's financial statements covered by the L&H audit report.

Response 4. Annual Reports on Form N–SAR: Investment companies filing reports on Form N–SAR should report L&H's bankruptcy, the withdrawal of substantially all L&H's general partners and the firm's cessation of audit and accounting services on their next regularly filed N–SAR.

Question 3: Prior to filing for bankruptcy on November 21, 1990, L&H may not have completed its audit and issued its audit report with respect to clients with fiscal year ends between August 31 and November 30, 1990. Because these former L&H audit clients will have to engage a new independent accounting firm, there may be insufficient time before the filing deadline for the new accountants to complete their engagement and sign the audit report required to be included in Commission filings. These filings would include annual reports on Form 10–K, Rule 14a–3 annual reports, Item 7 Form 8–K current reports, Item 77 Form N–SARs, as well as post-effective amendments updating financial information under the Securities Act. Will the staff grant relief where L&H's bankruptcy precludes the timely filing of audited financial statements?

Response 1: Generally, filings must comply with the audited financial statement requirements prescribed by the applicable Securities Act or Exchange Act form (usually three years).

However, the staff will grant registrant submissions to substitute temporarily unaudited financial statements for the most recent fiscal year under Rule 3–13 of Regulation S–X due to a company's inability to file timely audited financial statements and the independent accountant's audit report, where the company represents that, solely by reason of the L&H bankruptcy and cessation of audit and accounting services, the company was unable to timely file the audited financial statements and audit report without unreasonable effort or expense. As part of the submission, a company must undertake to file the report timely with unaudited year end financials and to file the required audited financial statements and audit report on or before the date specified in the request, but no later than March 31, 1991. If a company or its agent delivers the document containing unaudited financial statements to investors for any reason, a company also must undertake to deliver the audited financial statements and related financial information if such audited financial statements and related financial information differ materially from the information previously furnished.

In any document in which unaudited financial statements are included for the latest fiscal year pursuant to staff action under Rule 3–13 of Regulation S–X, the registrant should disclose at the beginning of the unaudited financial statements for such period that the audited financial statements for the latest fiscal year are not currently available, and will be filed by amendment no later than March 31, 1991.

Submissions for additional extensions of time will be considered where the audit cannot be reasonably completed within the time period specified in the initial request.

Submissions by companies should be directed to Teresa E. Iannaconi, Deputy Chief Accountant, Division of Corporation Finance, or, with respect to investment companies, Lawrence A. Friend, Chief Accountant, Division of Investment Management, Securities and Exchange Commission, 450 5th Street NW., Washington DC 20549.

Response 2. Annual Reports on Form 10–K or Form 20–F: Where it is impractical to obtain the required audited financial statements to permit timely filing of Annual Reports on Form 10–K or Form 20–F, the staff will permit the financial statements for the most recent fiscal year to be filed on an unaudited basis, but not beyond March 31, 1991, provided that unaudited financial statements are filed by the due date of the Form 10–K or Form 20–F and the audited financial statements and audit report for at least the most recent fiscal year ended are filed as soon as obtained but not later than the period specified in the staff's response.

Response 3. Annual Reports on Form N–SAR: The Division of Investment Management will grant similar relief for investment companies filing annual reports on Form N–SAR for fiscal years ending between August 31, 1990 and November 30, 1990.

Response 4. Securities Act Section 10(a)(3) Post-Effective Amendments: Where it is impractical to obtain the required audited financial statements to permit timely updating under section 10(a)(3), the staff will permit the financial statements for the most recent fiscal year end to be updated on an unaudited basis, provided that (1) the audited financial statements and related audit report are filed not later than the extended period for amending the issuer's Form 10–K or Form 20–F granted under the Rule 3–13 submission, and in no event beyond March 31, 1991; and (2) the unaudited financial statements for the latest fiscal year contained in the post-effective amendment are timely filed.

Resource 5. Post-Effective Amendments Required by the Guide 5 Undertakings: Where it is impractical to obtain the required audited financial statements of acquired properties to permit timely updates under the Guide 5 undertakings, the staff will permit the financial statements to be temporarily updated on an unaudited basis, provided that (1) the audited financial statements and related audit report are filed not later than March 31, 1991; and (2) the Guide 5 information including the unaudited financial statements are timely filed.

Response 6. Automatically Effective Registration Statements: New registration statements that become effective automatically under the Committee's rules and regulations will be permitted to go effective on the same basis as post-effective amendments discussed above in Response 4, that is initially with unaudited financial statements for the latest fiscal year, amended to include audited statements not later than the extended period for amending the registrant's Form 10–K or Form 20–F granted under the Rule 3–13 submission. Non-reporting companies would be treated in the same manner provided that the registration statement is amended to include audited

statements not later than March 31, 1991.

These filings include employee benefit plans (General Instruction D to Form S–8), dividend reinvestment plans (General Instruction III to Form S–3 and Form F–3), and one bank or S&L holding company reorganizations (General Instruction G to Form S–4).

Response 7. Post-Effective Amendments Filed Pursuant to Rule 485 of Regulation C: These amendments will be permitted to become effective on the same basis as post-effective amendments discussed in Response 4 above, that is initially with unaudited financial statements for fiscal years ended between August 31 and November 30, 1990, amended not later than March 31, 1991 to include audited financial statements.

Response 8. Annual Reports to Shareholders: With respect to the annual report furnished to securityholders pursuant to Rule 14a–3 of the proxy rules, unaudited financial statements would be acceptable for the most recent fiscal year for solicitations occurring during any extended period for amending the issuer's Form 10–K or Form N–SAR granted by the staff under Rule 3–13 (see Responses 2 and 3 above).

Response 9. Eligibility to Use Forms S–2, S–3, F–2 and F–3: Where the staff grants a Rule 3–13 submission permitting a registrant to substitute temporarily unaudited financial statements for audited financials in an issuer's Form 10–K or Form 20–F, such registrant will be deemed to have timely filed for purposes of qualifying for the use of registration statements on Forms S–2, S–3, F–2 and F–3, provided it complies with the terms of the Rule 3–13 relief. No additional waiver request will be required.

Response 10. Compliance with Rule 144(c), Rule 144A(d), Rule 252(f) of Regulation A and Rule 502(b) of Regulation D: Where the staff grants a Rule 3–13 submission permitting a registrant to substitute temporarily unaudited financial statements for audited financials in an issuer's Exchange Act reports, such registrant will be deemed to be current in its Exchange Act filings for at least the extended period and may so indicate on the cover page of its Form 10–K, Form 20–F and, provided that the company complies with the terms of the Rule 3–13 relief, subsequently filed Forms 10–Q.

With respect to a reporting company's compliance with the informational requirements of these rules, unaudited financial statements would be acceptable for the most recent fiscal year for purposes of satisfying such requirements with respect to offers or sales occurring during any extended period for amending the issuer's Form 10–K or Form 20–F granted by the staff under Rule 3–13 (see Response 2 above).

Question 4: Is an issuer whose financial statements are audited, in whole or in part, by L&H, precluded from registering securities transactions under the Securities Act or updating an existing registration statement because of the inability to obtain an L&H consent?

Response: Most issuers will not be precluded from registering transactions under the Securities Act or updating an existing registration statement due to the inability to file an L&H consent unless the registrant has engaged a new auditor that is a "successor" to the firm (see below for a discussion of the term "successor").

Prior to effectiveness of a registration statement (whether by lapse of time or acceleration), companies will be required to submit an application to waive L&H's consent under Rule 437 of Regulation C. Solely for purposes of determining whether the Rule 437 procedure is permissible under section 7 of the Securities Act, a company must represent in its application that the L&H audit was not undertaken solely for inclusion in the registration statement (e.g., compliance with credit agreements or other contractual agreements). Where this and the other conditions of the Rule are met, the staff, acting pursuant to delegated authority, will waive the L&H consent required under section 7 of the Securities Act and Rule 436 of Regulation C, unless the new auditor is a successor to the firm. An auditor will be presumed to be a successor to L&H, where there is both a continuity of association with the prior audit and accounting services and substantial participation of Firm partners in the new auditor (20% or more of partners or equity).

As a condition of the staff's granting an application for waiver of L&H's consent to the use of its audit report for the company's latest fiscal year, the registrant will be required to undertake to deliver to investors prospectuses containing the L&H disclosure at least 48 hours prior to mailing the confirmation. If no confirmation is delivered promptly to investors, such as may occur in connection with certain employee benefit plans, then the prospectus containing the L&H disclosure should be delivered 48 hours prior to the sale. With respect to employee benefit plans, companies may notify plan participants by letter, memorandum or other written document designated as part of the prospectus as provided by the recent revisions to the Form S–8 registration and prospectus procedures adopted by the Commission in Release No. 33–6867 (June 6, 1990).

Question 5: Where audited financial statements of a significant acquiree with fiscal year ends between August 31 and November 30, 1990 are required to be provided in a registration statement, proxy statement, information statement, tender offer documents, or in a Form 8–K and the audit of those financial statements either was performed by L&H or completion of the audit has been delayed as a result of the L&H bankruptcy filing, what disclosure should a registrant provide and will the staff grant any relief with respect to the requirements to provide such audited financial statements?

Response 1. Disclosure Obligations: Where a registrant acquires or proposes to acquire a significant business which was audited by L&H for any year for which audited financial statements are required to be filed, the registrant should provide the disclosures outlined in response to Question 1 with respect to Securities Act filings, and Question 2 with respect to Exchange Act and Williams Act filings.

Response 2. Filing of Audited Financial Statements: Where the audit of the target was not completed by L&H and the registrant represents that, by reason of the L&H bankruptcy and cessation of the firm's audit and accounting services, it was unable to meet the applicable filing requirements, the staff will grant Rule 3–13 submissions (see responses to Question 3 above) for temporary substitution of unaudited financial statements provided that (1) the investment, asset, and income tests contained in the Rule 1–02(v) definition of "significant subsidiary" do not exceed 50%; (2) the audited financial statements are filed in a post-effective amendment not later than March 31, 1991; (3) the unaudited financial statements are timely filed; and (4) the registrant undertakes to deliver the audited financial statements and related financial information (including pro forma financial information) if such audited financial statements and related financial information differ materially from the information previously furnished.

Further requests for extensions of time will be considered where the audit cannot be reasonably completed within the time period specified in the initial submission.

Question 6: Rule 2–02(a) of Regulation S–X sets forth technical requirements applicable to the preparation of audit reports contained in documents filed

with, or in the case of annual reports covered by Rule 14a–3(b) of Regulation 14A, furnished to the Commission. Among other requirements, Rule 2–02(a) requires that each audit report by manually signed. Will the staff grant former L&H audit clients relief with respect to their inability to obtain a manually signed L&H audit report as a result of the L&H bankruptcy and its discontinuance of audit and accounting services?

Response 1. Annual Reports on Form 10–K: Former L&H audit clients who are unable to satisfy the technical requirements of Rule 2–02(a) should include in the document a copy of the latest signed and dated audit report issued by L&H. Prominent disclosure that the report is a copy of the previously issued L&H audit report, of L&H's bankruptcy on November 21, 1990 and of the firm's discontinuance of audit and accounting services should be set forth on the L&H audit report page.

Response 2. Annual Reports to Shareholders: Note 1 to Rule 14a–3(b)(1) permits a registrant to omit the separate audit report issued by a former accountant provided enumerated conditions are satisfied, including the condition that the registrant obtains a reissued audit report covering the prior period presented. Former L&H audit clients who are unable to obtain a reissued L&H report should include in the annual report a copy of the latest signed and dated audit report issued by L&H. Prominent disclosure that the report is a copy of the previously issued L&H audit report, of L&H's bankruptcy on November 21, 1990, and of the firm's discontinuance of audit and accounting services should be set forth on the L&H audit report page.

Question 7: Section 32(a) of the Investment Company Act of 1940 prohibits registered management companies or registered face amount certificate companies from filing with the Commission any financial statement signed or certified by an independent public accountant, unless the selection of the accountant has been submitted for ratification or rejection at the next succeeding meeting, if such meeting is held. However, this section provides an exception that allows a vacancy occurring between annual meetings, due to the death or resignation of the accountant, to be filled by the vote of a majority of the members of the board of directors who are not interested persons of the registered company. Will the staff interpret the bankruptcy or dissolution of the accountant to come within this exception?

Response: The staff will interpret the bankruptcy and dissolution of L&H as a resignation. Investment companies may select a new accountant to replace L&H in accordance with section 32(a) without calling a special meeting of stockholders or scheduling an annual meeting when one would not otherwise be required.

[FR Doc. 91–2957 Filed 2–6–91; 8:45 am]
BILLING CODE 8010–01–M

DEPARTMENT OF JUSTICE

28 CFR Part 14

[Order No. 1471–91]

Administrative Claims Under the Federal Tort Claims Act; Delegation of Authority

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This Order delegates authority to the Secretary of Defense to settle administrative claims presented pursuant to the Federal Tort Claims Act where the amount of the settlement does not exceed $100,000. The Order implements Public Law 101–552. This Order will alert the general public to the Secretary's new authority, and is being codified in the CFR to provide a permanent record of this delegation.

EFFECTIVE DATE: February 7, 1991.

FOR FURTHER INFORMATION CONTACT: Jeffrey Axelrad, Director, Torts Branch, Civil Division, U.S. Department of Justice, Washington, DC 20530, (202) 501–7075.

SUPPLEMENTARY INFORMATION: This Order has been issued to delegate settlement authority and is a matter solely related to division of responsibility between the Department of Justice and the Department of Defense. It does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). It is not a major rule within the meaning of Executive Order No. 12291.

List of Subjects in 28 CFR Part 14

Authority delegations (government agencies), Claims.

By virtue of the authority vested in me, including 28 U.S.C. 509, 510, 5 U.S.C. 301, and 38 U.S.C. 223(a), title 28 of the Code of Federal Regulations is revised as follows:

PART 14—[AMENDED]

1. The authority citation for part 14 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 2672; 38 U.S.C. 223(a).

Appendix—[Amended]

2. Part 14 is amended by adding a new provision at the end of the appendix to part 14 to read as follows:

Delegation of Authority to the Secretary of Defense

Section 1. Authority to compromise tort claims.

(a) The Secretary of Defense shall have the authority to adjust, determine, compromise and settle a claim involving the Department of Defense under section 2672 of title 28, United States Code, relating to the administrative settlement of federal tort claims, if the amount of the proposed adjustment, compromise, or award does not exceed $100,000. When the Secretary believes a claim pending before him presents a novel question of law or of policy, he shall obtain the advice of the Assistant Attorney General in charge of the Civil Division.

(b) The Secretary may redelegate in writing the settlement authority delegated to him under this section.

Section 2. Memorandum.

Whenever the Secretary settles any administrative claim pursuant to the authority granted by section 1 for an amount in excess of $50,000 and within the amount delegated to him under section 1, a memorandum fully explaining the basis for the action taken shall be executed. A copy of this memorandum shall be sent to the Director, FTCA Staff, Torts Branch of the Civil Division.

Dated: January 31, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91–2912 Filed 2–6–91; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Wilmington Regulation (05–91–003)]

Security Zone Regulations: Cape Fear River, North Carolina State Ports Authority, Wilmington, NC

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the Cape Fear River in the vicinity of North Carolina State Ports Authority (NCSPA) consisting of the Cape Fear River near Wilmington, NC, from a point 1000 yards (925 meters) south of the Cape Fear Memorial Bridge to Cape Fear River Channel Light 53 (LLNR 28675), the land and water areas within 1000 yards to the west of the Fourth East Jetty Range and Between Channel, and the land and water areas within 200

yards (182 meters) to the east of the Fourth East Jetty Range and Between Channel. This security zone is established at the request of the United States Army and Navy and is needed to safeguard vessels and property at NCSPA, and other government property essential to the national security from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port, Wilmington, North Carolina.

EFFECTIVE DATE: This regulation becomes effective at 1 p.m. January 18, 1991. It terminates on the completion of Operation DESERT STORM unless sooner terminated by the Captain of the Port. A notice will be published in the **Federal Register** announcing termination of the rule.

FOR FURTHER INFORMATION CONTACT: LCDR P.A. Richardson, USCG, c/o U.S. Coast Guard Captain of the Port, 272 North Front Street, Suite 500, Wilmington, NC 28401–3907; telephone (919) 343–4881.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is necessary to prevent damage to vessels at NCSPA, government property, or delay to defense operations, essential to the national security.

Drafting Information

The Drafters of this regulation are LCDR P.A. Richardson, project officer for the Captain of the Port, and Capt M.K. Cain, project attorney, Fifth Coast Guard District Legal Office.

Discussion of the Regulation

The events requiring this regulation will begin at 1 p.m. January 18, 1991. These operations are essential to the national security of the United States, and damage to vessels or equipment involved or delay to the operation would seriously damage the security and interests of the United States.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways

Regulation

In consideration of the foregoing, subpart C of part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231: 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. In part 165, a new § 165.T05–91–003 is added, to read as follows:

§ 165.T05–91–003—Security Zone: Cape Fear River In Vicinity of North Carolina State Ports Authority, Wilmington, NC.

(a) *Location.* The following area is a security zone: The Cape Fear River in the vicinity of North Carolina State Ports Authority (NCSPA) consisting of the Cape Fear River from a point 1000 yards (925 meters) south of the Cape Fear Memorial Bridge to Cape Fear River Channel Light 53 (LLNR 28675), the land and water areas within 1000 yards to the west of the Fourth East Jetty Range and Between Channel, and the land and water areas within 200 yards (182 meters) to the east of the Fourth East Jetty Range and Between Channel.

(b) *Effective Date.* This regulation is effective at 1:00 p.m. January 18, 1991. It terminates on the completion of Operation DESERT STORM unless sooner terminated by the Captain of the Port. A notice will be published in the **Federal Register** announcing termination of the rule.

(c) *Regulations.*

(1) In accordance with the general regulations in Section 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Wilmington, NC.

(2) Persons or vessels requiring entry into or passage through the security zone may request authorization from the Captain of the Port or his designated representative by telephone at (919) 343–4881 or by contacting a Coast Guard vessel patrolling the security zone.

(3) All vessels entering the security zone may be boarded and examined by the Coast Guard under existing regulations, prior to entry, to ensure compliance with safety and navigation regulations, and to ensure compliance with the general regulations in § 165.33.

(4) Public notice of this regulation will be made by issuing periodic Marine Safety Information Broadcast Notice to Mariners to notify the maritime community of the existence of the security zone.

(5) Section 165.33 also contains other general requirements.

(d) *Effective Date.* This regulation is effective on 1 p.m. January 18, 1991. It terminates on the completion of Operation DESERT STORM or unless sooner terminated by the Captain of the Port. A notice will be published in the **Federal Register** announcing termination of the rule.

Dated: January 18, 1991.

P.J. Pluta,

Captain, U.S. Coast Guard, Captain of the Port, Wilmington, North Carolina.

[FR Doc. 91–2935 Filed 2–6–91; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3903–1]

Prevention of Significant Deterioration; Delegation of Authority; Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The Regional Administrator for EPA Region 9, San Francisco, has amended the agreement delegating full authority to the Bay Area Air Quality Management District to implement and enforce the Federal Prevention of Significant Deterioration (PSD) Program.

DATES: The effective date of the initial delegation was April 23, 1986. The effective date of the revised delegation is January 4, 1991.

ADDRESSES: Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, California 94109.

FOR FURTHER INFORMATION CONTACT: Deborah Jordan, New Source section (A–3–1), Air Operations Branch, Air and Toxics Division, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105, Telephone: (415) 744–1257.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency has delegated under the provisions which are found in 40 CFR 52.21(u), to the Bay Area Air Quality Management District: (A) Authority over all sources in that District subject to review for the prevention of significant deterioration of air quality, pursuant to part C, 100–169 of title I of the Clean Air Act as amended August 7, 1977 and the requirements promulgated in the July 1, 1980 under authority of sections 101, 110

and 160–169 of the Clean Air Act; and (B) authority to review, administer, and enforce throughout the District the PSD requirements imposed by the Clean Air Act sections 101, 110 and 160–169, and 40 CFR 52.21 as amended August 7, 1980.

Information on this delegation together with a copy of the delegation is provided below:

Delegation of authority for PSD was granted on April 23, 1986. The delegation was amended on December 28, 1990, and the amended delegation became effective on January 4, 1991. The following letter and attached agreement represent the terms and conditions of the amended delegation.

January 8, 1991

Milton Feldstein

Air Pollution Control Officer, Bay Area Air Quality, Management District, 939 Ellis Street, San Francisco, CA 94109

Dear Mr. Feldstein: I am pleased to transmit the amended EPA–BAAQMD Prevention of Significant Deterioration (PSD) delegation agreement. The agreement extends the District's PSD permitting authority to include the federal PM_{10} and NO_2 provisions added since the original agreement of April 23, 1986.

EPA remains committed to providing any guidance or technical assistance that may be needed in the District's implementation of this agreement. We look forward to a continuing partnership in the permitting program.

Sincerely,

Daniel W. McGovern

Regional Administrator

Enclosure

U.S. EPA-Bay Area AQMD Agreement for Delegation of Authority for Prevention of Significant Deterioration of Air Quality (40 CFR 52.21)

The undersigned, on behalf of the Bay Area Air Quality Management District (BAAQMD) and the United States Environmental Protection Agency (U.S. EPA), hereby agree to the delegation of authority of the administrative and enforcement elements of the stationary source review provisions of 40 CFR 52.21, Prevention of Significant Deterioration (PSD) from the U.S. EPA to the BAAQMD, subject to the terms and conditions below. EPA has determined that the PSD portion of the District Rule 2 of Regulation 2 (adopted March 7, 1984, with minor revisions adopted subsequently, as amended on November 1, 1989) generally meets the requirements of § 52.21; therefore, District Authorities to Construct (ATCs or permits) issued in accordance with the provisions of Rule 2 of BAAQMD Regulation 2 will be deemed to be Federal PSD permits pursuant to the provisions of this delegation agreement. This delegation is executed pursuant to 40 CFR 52.21(u), Delegation of Authority, and supersedes the agreement dated April 23, 1986.

Permits

1. District permits issued pursuant to this Agreement must meet the requirements of District Rule 2 of Regulation 2. District Authorities to Construct must be issued prior to the beginning of actual construction, as that term is defined at 40 CFR 52.21(b)(11), as required by 40 CFR 52.21(i)(1).

2. EPA reserves permitting authority for PSD sources with stack heights greater than 65 meters or sources which use a dispersion technique as defined by EPA, unless the District permits would comply with EPA's final stack height regulation (50 FR 44878, July 8, 1985).

3. EPA reserves authority for performing the review of the visibility impacts of new or modified major stationary sources that may adversely impact visibility in mandatory Class I areas unless the District permits would comply with EPA's final regulations regarding visibility review (50 FR 28544, July 12, 1985).

4. It is the understanding of the parties that, consistent with the provisions of Rule 2 of Regulation 2 and pursuant to section 41700 of the California Health and Safety Code, actual emission decreases are creditable only to the extent that the reductions have approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

5. The District will request EPA guidance on any matter involving the interpretation of sections 160–169 of the Clean Air Act or 40 CFR 52.21 to the extent that implementation, review, administration or enforcement of these sections has not been covered by determinations or guidance sent to the District.

6. Pursuant to its authority under the Clean Air Act and upon reasonable notice, EPA may review the permits issued by the District under this agreement to ensure that the District's implementation of Rule 2 of Regulation 2 is consistent with the contemporaneous time frame and actual emissions baseline requirements of federal regulations (40 CFR 52.21(b)(3)).

7. Pursuant to provisions of section 7(a) of the Endangered Species Act of 1973 (16 U.S.C. 1536(a)), EPA may not delegate and hereby retains its responsibilities to ensure that PSD permitting actions by the District are not likely to jeopardize the continued existence of endangered or threatened species, or adversely modify their critical habitats.

8. Pursuant to the provisions of 40 CFR 52.21(u)(2), the District shall consult with the appropriate State or local agency primarily responsible for managing land use prior to making any determinations under this Agreement.

9. The District shall conduct an annual review of the NO_2 increment status for each section 107 area designated as attainment over which it has jurisdiction and shall prepare a summary report of that review. Such review shall be made in accordance with current U.S. EPA guidance as provided to the District. Emissions from the following sources consume NO_2 increment: (1) Any new major stationary source or modification of a major stationary source on which construction begins after February 8, 1988; and (2) minor, area, and mobile sources, after the minor source baseline date as defined by 40 CFR 52.21. The initial review of the NO_2 increment status shall address the consumption of NO_2 increment between February 8, 1988, and the effective date of this Agreement.

10. District permits issued pursuant to this agreement which meet the requirements of 40 CFR 52.21 will be considered valid by EPA. The determination of compliance or noncompliance with 40 CFR 52.21 shall be made by EPA. The District shall issue a permit to applicants using District regulations and authority.

11. The primary responsibility for enforcement of the PSD regulations in the District will rest with the District. The District will enforce the provisions that pertain to the PSD program, except in those cases where the rule and policy of the District are more stringent. It that case, the District may elect to implement the more stringent requirements. Nothing in this agreement shall prohibit EPA from enforcing the PSD provisions of the Clean Air Act, the PSD regulations or any PSD permit issued by the District pursuant to this agreement. In the event that the District is unwilling or unable to enforce a provision of this delegation with respect to a source subject to the PSD regulations, the District will immediately notify the Regional Administrator. Failure to notify the Regional Administrator does not preclude EPA from exercising its enforcement authority.

General Conditions

1. This delegation may be amended at any time by the formal written agreement of both the BAAQMD and the U.S. EPA including amendments to add, change, or remove conditions or terms of this Agreement.

2. If the District adopts revisions to Rule 2 of Regulation 2, EPA may take steps to revoke the delegation in whole or in part pursuant to condition 3 below or the parties may amend the agreement pursuant to condition 1 above. Any amendments to Rule 2 of Regulation 2 which are adopted by the District, shall not be applied under this agreement until this agreement is amended so to provide.

3. If the U.S. EPA determines that the BAAQMD is not implementing the PSD program in accordance with the terms and conditions of this delegation, the requirements of 40 CFR 52.21, 40 CFR part 124, or the Clean Air Act, this delegation, after consultation with the BAAQMD, may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the BAAQMD.

4. The permit appeal provisions of 40 CFR part 124 shall apply to all appeals to the Administrator on permits issued by the BAAQMD under this delegation. For purposes of implementing the federal permit appeal provisions under this delegation, if there is a public comment requesting a change in a draft preliminary determination or draft permit conditions, the final permit issued by the BAAQMD shall contain a statement that for Federal PSD purposes and in accordance with 40 CFR 124.15 and 124.19, (1) the effective date of the permit is 30 days after the date of the final decision to issue, modify, or revoke and reissue the permit; and (2) if an appeal is made to the Administrator, the effective date of the permit is suspended until such time as the appeal is resolved. The BAAQMD shall inform EPA Region IX in accordance with conditions of this delegation when there is public comment requesting a change in the preliminary determination or in a draft permit condition. Failure by the BAAQMD to comply with the terms of this paragraph shall render the subject permit invalid for Federal PSD purposes.

5. This delegation of authority shall terminate upon the date EPA promulgates final approval or disapproval of District Rule 2 of Regulation 2 as it applies to PSD implementation.

6. This delegation of authority becomes effective upon the date of the signatures of both parties to this Agreement.

Date: 12–28–90—Milton Feldstein, Bay Area Air Quality Management District

Date: 1–4–91—Daniel W. McGovern, U.S. Environmental Protection Agency

The Regional Administrator finds good cause for foregoing prior public notice and for making this delegation effective immediately in that it is an administrative change and not one of substantive content. No additional substantive burdens are imposed on the parties affected. This delegation become effective on April 23, 1986; therefore, it serves no purpose to delay this technical revision, adding the District's address to the Code of Federal Regulations.

A copy of the request for delegation of authority is available for public inspection at the U.S. Environmental Protection Agency, Region 9 Office, Air and Toxics Division, Air Operations Branch, 75 Hawthorne Street, San Francisco, California 94105.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7501.

Dated: January 29, 1991.

Jerry Clifford,

Acting Regional Administrator.

[FR Doc. 91–2934 Filed 2–6–91; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[OPP–30072H; FRL 3844–3]

Tolerance Processing Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule increases fees charged for processing tolerance petitions for pesticides under the Federal Food, Drug, and Cosmetic Act (FFDCA). The change in fees reflects a 4.1 percent increase in pay for civilian Federal General Schedule (GS) employees in 1991.

EFFECTIVE DATE: March 11, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: Ken Wetzel, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1002–E, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–1128).

SUPPLEMENTARY INFORMATION: The EPA is charged with administration of section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). Section 408 authorizes the Agency to establish tolerance levels and exemptions from the requirements for tolerances for raw agricultural commodities. Section 408(o) requires that the Agency collect fees as will, in the aggregate, be sufficient to cover the costs of processing petitions for pesticide products, i. e., that the tolerance process be as self-supporting as possible. The current fee schedule for tolerance petitions (40 CFR 180.33) was published in the **Federal Register** on February 14, 1990 (55 FR 5217) and became effective on March 16, 1990. At that time the fees were increased 3.6 percent in accordance with a provision in the regulation that provides for automatic annual adjustments to the fees based on annual percentage changes in Federal salaries. The specific language in the regulation is contained in paragraph (o) of § 180.33 and reads in part as follows:

> (o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale * * *. When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the **Federal Register** as a final rule to become effective 30 days or more after publication, as specified in the rule.

The pay raise in 1991 for Federal General Schedule employees is 4.1 percent; therefore, the tolerance petition fees are being increased 4.1 percent. The entire fee schedule, § 180.33, is presented for the reader's convenience. (All fees have been rounded to the nearest $25.00.)

List of Subjects in 40 CFR Part 180

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

Dated: January 29, 1991

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.33 is revised to read as follows:

§ 180.33 Fees.

(a) Each petition or request for the establishment of a new tolerance or a tolerance higher than already established, shall be accompanied by a fee of $52,000, plus $1,300 for each raw agricultural commodity more than nine on which the establishment of a tolerance is requested, except as

provided in paragraphs. (b), (d), and (h) of this section.

(b) Each petition or request for the establishment of a tolerance at a lower numerical level or levels than a tolerance already established for the same pesticide chemical, or for the establishment of a tolerance on additional raw agricultural commodities at the same numerical level as a tolerance already established for the same pesticide chemical, shall be accompanied by a fee of $11,900 plus $825 for each raw agricultural commodity on which a tolerance is requested.

(c) Each petition or request for an exemption from the requirement of a tolerance or repeal of an exemption shall be accompanied by a fee of $9,575.

(d) Each petition or request for a temporary tolerance or a temporary exemption from the requirement of a tolerance shall be accompanied by a fee of $20,775 except as provided in paragraph (e) of this section. A petition or request to renew or extend such temporary tolerance or temporary exemption shall be accompanied by a fee of $2,950.

(e) A petition or request for a temporary tolerance for a pesticide chemical which has a tolerance for other uses at the same numerical level or a higher numerical level shall be accompanied by a fee of $10,375 plus $825 for each raw agricultural commodity on which the temporary tolerance is sought.

(f) Each petition or request for repeal of a tolerance shall be accompanied by a fee of $6,500. Such fee is not required when, in connection with the change sought under this paragraph, a petition or request is filed for the establishment of new tolerances to take the place of those sought to be repealed and a fee is paid as required by paragraph (a) of this section.

(g) If a petition or a request is not accepted for processing because it is technically incomplete, the fee, less $1,300 for handling and initial review, shall be returned. If a petition is withdrawn by the petitioner after initial processing, but before significant Agency scientific review has begun, the fee, less $1,300 for handling and initial review, shall be returned. If an unacceptable or withdrawn petition is resubmitted, it shall be accompanied by the fee that would be required if it were being submitted for the first time.

(h) Each petition or request for a crop group tolerance, regardless of the number of raw agricultural commodities involved, shall be accompanied by a fee equal to the fee required by the analogous category for a single tolerance that is not a crop group tolerance, i.e., paragraphs (a) through (f) of this section, without a charge for each commodity where that would otherwise apply.

(i) Objections under section 408(d) (5) of the Act shall be accompanied by a filing fee of $2,600.

(j)(1) In the event of a referral of a petition or proposal under this section to an advisory committee, the costs shall be borne by the person who requests the referral of the data to the advisory committee.

(2) Costs of the advisory committee shall include compensation for experts as provided in § 180.11(c) and the expenses of the secretariat, including the costs of duplicating petitions and other related material referred to the committee.

(3) An advance deposit shall be made in the amount of $25,950 to cover the costs of the advisory committee. Further advance deposits of $25,950 each shall be made upon request of the Administrator when necessary to prevent arrears in the payment of such costs. Any deposits in excess of actual expenses will be refunded to the depositor.

(k) The person who files a petition for judicial review of an order under section 408 (d) (5) or (e) of the Act shall pay the costs of preparing the record on which the order is based unless the person has no financial interest in the petition for judicial review.

(l) No fee under this section will be imposed on the Inter-Regional Research Project Number 4 (IR–4 Program).

(m) The Administrator may waive or refund part or all of any fee imposed by this section if the Administrator determines in his or her sole discretion that such a waiver or refund will promote the public interest or that payment of the fee would work an unreasonable hardship on the person on whom the fee is imposed. A request for waiver or refund of a fee shall be submitted in writing to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division (H7505C), Washington, DC 20460. A fee of $1,300 shall accompany every request for a waiver or refund, except that the fee under this sentence shall not be imposed on any person who has no financial interest in any action requested by such person under paragraphs (a) through (k) of this section. The fee for requesting a waiver or refund shall be refunded if the request is granted.

(n) All deposits and fees required by the regulations in this part shall be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency. All deposits and fees shall be forwarded to the Environmental Protection Agency, Headquarters Accounting Operations Branch, Office of Pesticide Programs (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. The payments should be specifically labeled "Tolerance Petition Fees" and should be accompanied only by a copy of the letter or petition requesting the tolerance. The actual letter or petition, along with supporting data, shall be forwarded within 30 days of payment to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division, (H7504C) Washington, DC 20460. A petition will not be accepted for processing until the required fees have been submitted. A petition for which a waiver of fees has been requested will not be accepted for processing until the fee has been waived or, if the waiver has been denied, the proper fee is submitted after notice of denial. A request for waiver or refund will not be accepted after scientific review has begun on a petition.

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale. In addition, processing costs and fees will periodically be reviewed and changes will be made to the schedule as necessary. When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the **Federal Register** as a Final Rule to become effective 30 days or more after publication, as specified in the rule. When changes are made based on periodic reviews, the changes will be subject to public comment.

[FR Doc. 91–2963 Filed 2–6–91; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201–4, 201–9, 201–18, 201–20, 201–23, 201–24, and 201–39

Implementation of the FIRMR Improvement Project; Correction

AGENCY: Information Resources Management Service, GSA.

ACTION: Final rule; correction.

SUMMARY: This document implements certain technical corrections to a final rule regarding republication of the Federal Information Resources Management Regulation (FIRMR), 41 CFR chapter 201, that began on page

53386 in the Federal Register of Friday, December 28, 1990, (55 FR 53386).

EFFECTIVE DATE: April 29, 1991.

FOR FURTHER INFORMATION CONTACT: Paul Whitson, GSA, Office of Information Resources Management Policy, telephone (202) 501–3194 or FTS 241–3194 (v) or (202) 501–0657 or FTS 241–0657 (tdd).

In 41 CFR chapter 201 Implementation of the FIRMR Improvement Project; Final Rule, Republication of Chapter (FR Doc. 90–30137), beginning on page 53386 in the issue of Friday, December 28, 1990, make the following corrections.

PART 201–4—[Corrected]

§ 201–4.001 [Corrected]

1. On page 53390, in the third column, in § 201–4.001, the definition "Capability validation", on the tenth line, is corrected to add a period after the word "validation".

§ 201–4.001 [Corrected]

2. On page 53391, in the third column, in § 201–4.001, the definition "Information Systems Security (INFOSEC)", on the fourteenth line, is corrected to add a comma after the word "process".

§ 201–4.001 [Corrected]

3. On page 53393, in the first column, in § 201–4.001 in the definition "Surplus", "Surplus" should be in italics.

PART 201–9—[CORRECTED]

§ 201–9.200 [Corrected]

4. On page 53395, in the third column, in § 201–9.200 introductory text, on the first line, "part" is corrected to read "subpart".

PART 201–18—[CORRECTED]

§ 201–18.002 [Corrected]

5. On page 53398, in the first column, in § 201–18.002(c), in the fourth line, "Bulletin C–8" is corrected to read "Bulletins C–8 and C–10".

PART 201–20—[CORRECTED]

§ 201–20.103–7 [Corrected]

6. On page 53399, in the second column, in § 201–20.103–7(c), in the second and third lines, "Bulletin C–8" is corrected to read "Bulletins C–8 and C–10".

§ 201–20.203–1 [Corrected]

7. On page 53399, in the third column, in § 201–20.203–1(a)(3), in the fourth and fifth lines, "those programs" is corrected to read "these programs".

§ 201–20.305–1 [Corrected]

8. On page 53401, in the third column, in § 201–20.305–1(a)(1) introductory text, in the second line the reference "1" to the footnote and the footnote are removed.

§ 201–20.305–1 [Corrected]

9. On the same page, in the same column, in § 201–20.305–1(a)(1) introductory text, in the last line, "the following applies:" is corrected to read "following applies:".

PART 201–23—[CORRECTED]

§ 201–23.003 [Corrected]

10. On page 53407, in the second column, in § 201–23.003(d), in the ninth line, "but screening" is corrected to read "but screening by GSA of exchange/sale transactions with an OAC per component of $1 million or more".

PART 201–24—[CORRECTED]

11. On page 53407, in the third column, in part 201–24, in the table of contents, "201–24.107 Financial Management Systems Software (FMSS)" is corrected to read "Financial Management Systems Software (FMSS) Multiple Awards Schedule (MAS) Contracts Program".

§ 201–24.107 [Corrected]

12. On page 53409, in the third column, in § 201–24.107, the heading "Financial Management System Software (FMSS)" is corrected to read "Financial Management Systems Software (FMSS) Multiple Awards Schedule (MAS) Contracts Program".

§ 201–24.107 [Corrected]

13. On the same page, in the same column, in § 201–24.107(a), in the sixth line, "FMSS multiple award schedule (MAS)" is corrected to read "FMSS MAS".

PART 201–39—[CORRECTED]

§ 201–39.106–4 [Corrected]

14. On page 53413, in the first column, in § 201–39.106–4(c)(2), in the third line, "when any" is corrected to read "if any".

§ 201–39.1501–1 [Corrected]

15. On page 53418, in the first column, in § 201–39.1501–1(a)(1), in the second and third lines, "and all optional quantities and contract periods" is corrected to read "and optional quantities, basic and optional contract periods, and optional FIP resources".

§ 201–39.1701–1 [Corrected]

16. On the same page, in the second column, in § 201–39.1701–1(c) the paragraph is corrected to read:

"(c) Soliciting and evaluating optional quantities, optional contract periods, and optional FIP resources can be an effective method to achieve competition for the options and to prevent the possibility of a contractor "buying-in"."

§ 201–39.1701–3 [Corrected]

17. On the same page, in the same column, in § 201–39.1701–3 introductory text, in the fourth and fifth lines, "performance or to acquire additional quantities may be used when—" is corrected to read "performance or to acquire additional quantities or optional FIP resources may be used when—".

§ 201–39.1701–3 [Corrected]

18. On the same page, in the same column, in § 201–39.1701–3(c), in the second line, "periods or quantities" is corrected to read "periods, quantities or optional FIP resources".

§ 201–39.5202–1 [Corrected]

19. On page 53419, in the second column, in § 201–39.5202–1, in the title of the clause, "FIRMR Applicability (Oct 89 FIRMR)" is corrected to read "FIRMR Applicability (Oct 90 FIRMR)".

§ 201–39.5202–2 [Corrected]

20. On the same page, in the third column, in § 201–39.5202–2, in the third line of the title of the provision, "(Oct 89 FIRMR)" is corrected to read "(Oct 90 FIRMR)".

§ 201–39.5202–3 [Corrected]

21. On the same page, in the same column, in § 201–39.5202–3, in the title of the clause, "Procurement Authority (Oct 89 FIRMR)" is corrected to read "Procurement Authority (Oct 90 FIRMR)".

§ 201–39.5202–4 [Corrected]

22. On the same page, in the same column, in § 201–39.5202–4, in the title of the provision, "Evaluation of Options—FIP Resources (Oct 89 FIRMR)" is corrected to read "Evaluation of Options—FIP Resources (Oct 90 FIRMR)".

§ 201–39.5202–5 [Corrected]

23. On page 53420, in the first column, in § 201–39.5202–5, in the title of the clause, "Privacy or Security safeguards (Oct 89 FIRMR)" is corrected to read "Privacy or Security Safeguards (Oct 90 FIRMR)".

§ 201–39.5202–6 [Corrected]

24. On the same page, in the third column, in § 201–39.5202–6, in the title of the clause "Warranty Exclusion and Limitation of Damages (Oct 89 FIRMR)" is corrected to read "Warranty

Exclusion and Limitation of Damages (Oct 90 FIRMR)".

FIRMR Index [Corrected]

25. On the same page, in the FIRMR Index, in the entry for "ADP", "201–4.002, 201–20.003" is corrected to read "201–4.002, 201–20.303".

FIRMR Index [Corrected]

26. On page 53421, in the FIRMR Index, in the entry for "Disability(ies)" the right-hand column is removed and corrected to read "Disability(ies) (See Employees with disabilities)".

FIRMR Index [Corrected]

27. On page 53422, in the FIRMR Index, the entry for "Employees with disabilities" is corrected to read as follows: "Employees with disabilities * * * 201–3.402, 201–17.001, 201–18.001, 201–20.103–7, 201–21.603, Bulletin C–8, Bulletin C–9, Bulletin C–10."

Dated: January 25, 1991.

Margaret Truntich,

Chief, Regulations Branch.

[FR Doc. 91–2785 Filed 2–6–91; 8:45 am]

BILLING CODE 6820–25–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–441; RM–7210]

Radio Broadcasting Services; Grand Rapids, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 254A for Channel 255A at Grand Rapids, Michigan, in response to a petition filed by Haith Broadcasting Corporation. See 55 FR 42587, October 22, 1990. We shall also modify the construction permit for Station WXJI, Channel 255A, to specify operation on Channel 254A. Canadian concurrence has been obtained for Channel 254A at coordinates 43–01–36 and 85–41–28.

EFFECTIVE DATE: March 18, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–441, adopted January 24, 1991, and released February 1, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan is amended by removing Channel 255A and adding Channel 254A at Grand Rapids.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91–2922 Filed 2–6–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–513; RM–7388]

Radio Broadcasting Services; Campbell, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 298C3 for Channel 298A and modifies the construction permit for Station KKJJ to specify operation on the higher class channel at Campbell, Missouri, in response to a petition filed by Jack G. Hunt. *See* 55 FR 47345, November 11, 1990. Coordinates for Channel 298C3 at Campbell are 36–29–42 and 89–51–17.

EFFECTIVE DATE: March 18, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–513, adopted January 24, 1991, and released February 1, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 298A and adding Channel 298C3 at Campbell.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91–2923 Filed 2–6–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–470; RM–7374]

Radio Broadcasting Services; Laurel, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 269C to Laurel, Montana, as that community's first FM service in response to a petition filed by Jubilee Radio Network of Montana. See 55 FR 45624, October 30, 1990. The coordinates for Channel 269C are 45–40–24 and 108–46–18.

EFFECTIVE DATE: March 18, 1991; the window period for filing applications for channel 269C at Laurel, Montana will open on March 19, 1991, and close on April 18, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–470, adopted January 22, 1991, and released February 1, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Channel 269C, Laurel.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-2924 Filed 2-6-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-487; RM-7390]

Radio Broadcasting Services; Tishomingo, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Ballard Broadcasting Company of Oklahoma, Inc., substitutes Channel 259C3 for Channel 292A at Tishomingo, Oklahoma, and modifies its construction permit for Station KTSH-FM to specify operation on the higher powered channel. Channel 259C3 can be allotted to Tishomingo in compliance with the Commission's minimum distance separation requirements and can be used at the transmitter site specified in the station's construction permit. The coordinates for Channel 259C3 at Tishomingo are North Latitute 34-11-15 and West Longitude 96-43-28. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 18, 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. 90-487, adopted January 22, 1991, and released February 1, 1991. 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 Oklahoma, is amended by removing Channel 292A and adding 259C3 at Tishomingo.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-2925 Filed 2-6-91; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 56, No. 26
Thursday, February 7, 1991

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA-90-013]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; Proposed Revision of the United States Standards for Grades of Dry Sweetcream Buttermilk and Proposed Amendments to the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes a revision of the United States Standards for Grades of Dry Sweetcream Buttermilk. In addition to redesignating this product as dry buttermilk, this proposal would expand the scope of the current standards by including criteria which evaluate the quality of dry buttermilk product. The proposal also would broaden the application of these standards, to more clearly reflect current industry processing practices and marketing needs, by providing for buttermilk derived from the churning of butter obtained from a variety of cream sources. These changes were initiated at the request of the American Dairy Products Institute.

DATES: Comments must be received on or before April 8, 1991.

ADDRESSES: Comments should be sent to: Director, USDA/AMS/Dairy Division, room 2968–S, P.O. Box 96456, Washington, DC 20090–6456. All comments made pursuant to this notice will be available for public inspection in room 2750–S between 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Duane R. Spomer, Head, Dairy Standardization Section, USDA/AMS/Dairy Division, room 2750–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–7473.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as a "non-major" rule under the criteria contained therein.

The proposed rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Administrator, Agricultural Marketing Service, has determined that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities because use of the standards is voluntary and the revisions would not increase costs to those utilizing the standards.

USDA grade standards are voluntary standards that are developed pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) to facilitate the marketing process. Such standards for dairy products identify the degree of quality in the various products. Quality in general refers to usefulness, desirability, and value of the product—its marketability as a commodity.

Manufacturers of dairy products are free to choose whether or not to use these grade standards. When products are officially graded, the USDA regulations and standards governing the grading of manufactured or processed dairy products are used. These regulations also require a charge for the grading service provided by USDA.

In accordance with the United States Department of Agriculture policy for regulatory review, the Dairy Standardization Section conducted a review of the United States Standards for Grades of Dry Sweetcream Buttermilk and the Department's informal Specification for Dry Buttermilk Product. The objective of the review was to obtain both current and historical information relating to an industry proposal to revise the current standards for dry buttermilk and to formalize quality grade standards for dry buttermilk product.

The review involved the collection and evaluation of information from the Department's Dairy Grading Section and representatives of the American Dairy Products Institute. It was determined that the current definition for dry buttermilk requires that the liquid buttermilk be derived from the churning of butter made entirely from sweetcream. Buttermilk derived from the churning of butter which contains cream from sources other the sweetcream are specifically excluded in the USDA grade standard. Current industry practices, however, utlize cream from a variety of sources in the manufacture of butter. These sources include cream separated from whole milk, cream separated from whey, which is a co-product of the cheese making process, and cultured cream, which encourages the proliferation of lactic-acid-producing bacteria to provide a cultured flavor in butter. Buttermilk obtained from these sources may be further processed into dry buttermilk and dry buttermilk product.

The proposal would provide a broader definition of dry buttermilk, change the nomenclature of dry sweetcream buttermilk to dry buttermilk, and expand the scope of the standard to incorporate quality criteria for dry buttermilk product eligible for USDA grading service.

The primary property which differentiates the value and usability of dry buttermilk and dry buttermilk product is the protein content. The proposal would establish a minimum protein content for dry buttermilk. To achieve this minimum the dry buttermilk must be obtained from a cream source which has a composition sufficiently high in protein to meet the standard requirement.

This proposal would also incorporate quality criteria for dry buttermilk product. Dry buttermilk product is considered to be a commodity of lesser economic value and may be obtained from a cream source which has a variable protein content. The resulting dry product will not meet the minimum protein content for dry buttermilk.

Corollary changes are also provided in part 58, subpart B, entitled General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service, to conform the definitions of dry buttermilk and dry buttermilk product set forth therein with the proposed United States Standards for Grades of Dry Buttermilk and Dry Buttermilk Product.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 58 be amended as follows:

PART 58—[AMENDED]

1. The authority citation for 7 CFR part 58 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

2. In subpart B, § 58.205, paragraph (d) is revised and paragraph (e) is added to read as follows:

§ 58.205 Meaning of words.

* * * * *

(d) *Dry buttermilk.* The product resulting from drying liquid buttermilk that was derived from the churning of butter and pasteurized prior to condensing at a temperature of 161°F for 15 seconds or its equivalent in bacterial destruction. Dry buttermilk shall have a protein content of not less than 30.0 percent. Dry buttermilk shall not contain or be derived from nonfat dry milk, dry whey, or products other than buttermilk, and shall not contain any added preservative, neutralizing agent, or other chemical.

(e) *Dry buttermilk product.* The product resulting from drying liquid buttermilk that was derived from the churning of butter and pasteurized prior to condensing at a temperature of 161°F for 15 seconds or its equivalent in bacterial destruction. Dry buttermilk product has a protein content less than 30.0 percent. Dry buttermilk product shall not contain or be derived from nonfat dry milk, dry whey, or products other than buttermilk, and shall not contain any added preservative, neutralizing agent, or other chemical.

3. In subpart B, § 58.234 is revised to read as follows:

§ 58.234 Buttermilk.

Buttermilk for drying as dry buttermilk or dry buttermilk product shall be fresh and derived from the churning of butter, with or without the addition of harmless lactic culture. No preservative, neutralizing agent or other chemical may be added. Fluid buttermilk, unless cultured, shall be held at 45°F or lower unless processed within 2 hours.

4. In subpart B, § 58.236 is amended by revising paragraph (a)(2) to read as follows:

§ 58.236 Pasteurization and heat treatment.

* * * * *

(a) * * *

(2) All buttermilk to be used in the manufacture of dry buttermilk or dry buttermilk product shall be pasteurized prior to condensing at a temperature of 161 °F for 15 seconds or its equivalent in bacterial destruction.

* * * * *

5. In subpart B, § 58.251 is revised to read as follows:

§ 58.251 Dry buttermilk and dry buttermilk product.

The quality requirements for dry buttermilk or dry buttermilk product bearing an official identification shall be in accordance with the U.S. Standards for Grades of Dry Buttermilk and Dry Buttermilk Product.

6. Subpart Q—United States Standards for Grades of Dry Sweetcream Buttermilk is revised to read as follows:

Subpart Q—United States Standards for Grades of Dry Buttermilk and Dry Buttermilk Product [1]

Definitions

Sec.

58.2651 Dry buttermilk and dry buttermilk product.

U.S. Grades.

58.2652 Nomenclature of U.S. grades.
58.2653 Basis for determination of U.S. grades.
58.2654 Specifications for U.S. grades.
58.2655 U.S. grade not assignable.
58.2656 Test methods.

Explanation of Terms

58.2657 Explanation of terms.

Subpart Q—United States Standards for Grades of Dry Buttermilk and Dry Buttermilk Product

Authority: Agricultural Marketing Act of 1946, Secs. 203 and 205, 60 Stat. 1087, as amended, and 1090, as amended; 7 U.S.C. 1622 and 1624.

Definitions

§ 58.2651 Dry buttermilk and dry buttermilk product.

(a) *Dry buttermilk* (made by the spray process or the atmospheric roller process) is the product resulting from drying liquid buttermilk that was derived from the churning of butter and pasteurized prior to condensing at a temperature of 161 °F for 15 seconds or its equivalent in bacterial destruction. Dry buttermilk shall have a protein content of not less than 30.0 percent. Dry buttermilk shall not contain or be derived from nonfat dry milk, dry whey, or products other than buttermilk, and shall not contain any added preservative, neutralizing agent, or other chemical.

(b) *Dry buttermilk product* (made by the spray process or the atmospheric roller process) is the product resulting from drying liquid buttermilk that was derived from the churning of butter and was pasteurized prior to condensing at a temperature of 161 °F for 15 seconds or its equivalent in bacterial destruction Dry buttermilk product has a protein content less than 30.0 percent. Dry buttermilk product shall not contain or be derived from nonfat dry milk, dry whey, or products other than buttermilk, and shall not contain any added preservative, neutralizing agent, or other chemical.

U.S. Grades

§ 58.2652 Nomenclature of U.S. grades.

The nomenclature of U.S. grades is as follows:

((a) U.S. Extra.

(b) U.S. Standard.

§ 58.2653 Basis for determination of U.S. grades.

(a) The U.S. grades of dry buttermilk and dry buttermilk product are determined on the basis of flavor, physical appearance, bacterial estimate on the basis of standard plate count, milkfat, moisture, scorched particles, solubility index, titratable acidity, and protein content.

(b) The final U.S. grade shall be established on the basis of the lowest rating of any one of the quality characteristics.

§ 58.2654 Specifications for U.S. grades.

(a) *U.S. Extra Grade.* U.S. Extra Grade dry buttermilk and U.S. Extra Grade dry buttermilk product shall conform to the following requirements (See Tables I, II, III, and IV):

(1) *Flavor (applies to the reconstituted product).* Shall be sweet and pleasing, and has no unnatural or offensive flavors.

(2) *Physical appearance.* Shall possess a uniform cream to light brown color, be free from lumps except those that readily break up with slight pressure, and be practically free from visible dark particles.

(3) *Bacterial estimate.* Not more than 50,000 per gram standard plate count.

(4) *Milkfat content.* Not less than 4.5 percent.

(5) *Moisture content.* Not more than 4.0 percent.

(6) *Scorched particle content.* Not more than 15.0 mg. for spray process and 22.5 mg. for roller process.

[1] Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

(7) *Solubility index.* Not more than 1.25 ml. for spray process and 15.0 ml. for roller process.

(8) *Titratable acidity.* Not less than 0.10 percent nor more than 0.18 percent.

(9) *Protein content (dry buttermilk only).* Not less than 30.0 percent.

(10) *Protein content (dry buttermilk product only).* Not less than 30.0 percent.

(b) *U.S. Standard Grade.* U.S. Standard Grade dry buttermilk and U.S. Standard Grade dry buttermilk product shall conform to the following requirements (see Tables I, II, III, and IV):

(1) *Flavor (applies to the reconstituted product).* Should possess a fairly pleasing flavor, but may possess slight unnatural flavors and has no offensive flavors.

(2) *Physical appearance.* Shall possess a uniform cream to light brown color, be free from lumps except those that readily break up with moderate pressure, and be reasonably free from visible dark particles.

(3) *Bacterial estimate.* Not more than 200,000 per gram standard plate count.

(4) *Milkfat content.* Not less than 4.5 percent.

(5) *Moisture content.* Not more than 5.0 percent.

(6) *Scorched particle content.* Not more than 22.5 mg. for spray process and 32.5 mg. for roller process.

(7) *Solubility index.* Not more than 2.0 ml. for spray process and 15.0 ml. for roller process.

(8) *Titratable acidity.* Not less than 0.10 percent nor more than 0.20 percent.

(9) *Protein content (dry buttermilk only).* Not less than 30.0 percent.

(10) *Protein content (dry buttermilk product only).* Less than 30.0 percent.

Table I.—Classification of Flavor

Flavor characteristics	U.S. extra grade	U.S. standard grade
Unnatural	None	Slight.
Offensive	None	None.

Table II.—Classification of Physical Appearance

Physical appearance characteristics	U.S. extra grade	U.S. standard grade
Lumpy	Slight	Moderate.
Visible dark particles.	Practically free	Reasonably free.

Table III.—Classification According to Laboratory Analysis

Laboratory tests	U.S. extra grade	U.S. standard grade
Bacterial estimate: standard plate count per gram (Max.)	50,000	200,000
Milkfat contents: percent (Max.)	4.5	4.5
Moisture content: percent (Max.)	4.0	5.0
Scorched particle content: mg.		
Spray process (Max.)	15.0	22.5
Roller process (Max.)	22.5	32.5
Solubility index: ml.		
Spray process (Max.)	1.25	2.0
Roller process (Max.)	15.0	15.0
Titratable acidity: percent	0.10–0.18	0.10–0.20

Table IV.—Classification According to Protein

Product	U.S. extra grade	U.S. standard grade
Dry Buttermilk percent (Min.)	30.0	30.0
Dry Buttermilk Product percent (Less than)	30.0	30.0

§ 58.2655 U.S. grade not assignable.

Dry buttermilk or dry buttermilk product shall not be assigned a U.S. grade for one or more of the following reasons:

(a) Fails to meet the requirements for U.S. Standard Grade.

(b) Is produced in a plant found on inspection to be using unsatisfactory manufacturing practices, equipment, or facilities, or to be operating under unsanitary plant conditions.

(c) Is produced in a plant which is not USDA approved.

§ 58.2656 Test methods.

All required tests shall be performed in accordance with "Instructions for Resident Grading Quality Control Service Programs and Laboratory Analysis," DA Instruction No. 918–RL, Dairy Grading Section, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20090–6456; and "Official Methods of Analysis of the Association of Official Analytical Chemists," 15th Ed. or latest revision.

Explanation of Terms

§ 58.2657 Explanation of terms.

(a) *With respect to flavor:* (1) *Slight.* Detectable only upon critical examination.

(2) *Offensive.* Those that are obnoxious and cause displeasure when tasted or smelled.

(3) *Unnatural.* Those that are abnormal to the characteristic flavor of the product.

(b) *With respect to physical appearance.* (1) *Practically free.* Present only upon very critical examination.

(2) *Reasonably free.* Present only upon critical examination.

(3) *Slight pressure.* Only sufficient pressure to disintegrate the lumps readily.

(4) *Moderate pressure.* Only enough pressure to disintegrate the lumps easily.

(5) *Lumpy.* Loss of powdery consistency but not caked into hard chunks.

(6) *Visible dark particles.* The presence of scorched or discolored specks.

Signed at Washington, DC on February 4, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91–2975 Filed 2–6–91; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 915

[Docket No. FV–91–226PR]

Avocados Grown in South Florida; Proposed Establishment of Grade and Container Lot Marking Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes establishing a minimum grade requirement of U.S. No. 2 and container lot marking requirements for Florida avocados handled to points within the production area (South Florida). This proposed action is expected to result in the shipment of better quality avocados to the fresh market within the production area and improve program compliance in the interest of growers, handlers, and consumers.

DATES: Comments must be received by March 11, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS,

USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. The written comments should reference the docket number, date, and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 475–3918.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under the Marketing Agreement and Marketing Order No. 915, as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act. This proposed rule has been reviewed by the 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.

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 proposed action on small entities.

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

There are about 42 handlers of Florida avocados subject to regulation under Marketing Order No. 915, and about 300 avocado producers in the production area (South Florida). Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural services firms are defined as those whose annual receipts are less than $3,500,000. The majority of the avocado handlers and producers may be classified as small entities.

The Avocado Administrative Committee (committee) met November 7, 1990, and recommended this proposed rule. The committee works with the Department in administering the marketing agreement and order. The committee meets prior to and during each session to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida avocados. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations, information submitted by the committee and other information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

The proposed rule would change the current grade and container lot marking regulations for Florida avocados by revising paragraphs (a) and (b) of § 915.306 (7 CFR 915.306) to require all Florida avocados handled to grade at least U.S. No. 2 and be in containers marked with a Federal-State Inspection Service lot stamp number. Currently, only avocados handled to points outside the production area and those in containers authorized under § 915.305 must meet these grade and container lot marking requirements. Avocados which are imported into the United States under 7 CFR 944.28 are already required to grade U.S. No. 2 and, therefore, the regulations concerning the grade of imported avocados shall remain unchanged.

Maturity requirements for Florida avocados handled to points both within and outside the production area are specified in § 915.332. These requirements, based on minimum weights and diameters, would remain in effect and unchanged by this proposed action.

About 12 percent of Florida's fresh avocado shipments in 1989–90 were to production area markets, of which slightly over one-half were inspected and certified as meeting both grade and maturity requirements, with the remainder meeting maturity requirements only. The committee recommended this proposed rule to improve the quality of avocados shipped to markets within the production area. The committee reported that shipments of poor quality avocados to markets within the production area have depressed prices for better quality avocados and resulted in lower overall returns to producers. The proposed grade and lot marking requirements are designed to strengthen market conditions for shipments within South Florida in the interest of growers, handlers, and consumers.

This proposed action also is expected to improve compliance with order requirements within South Florida, since lot stamping provisions make it easier to determine the handler of a particular lot of avocados and if such lot was inspected and certified as meeting marketing order requirements. This should help prevent violative shipments of substandard avocados within the production area.

Although compliance with these grade and lot stamping requirements will affect costs to handlers, these costs would be offset by the benefits of providing the trade and consumers with better quality avocados.

Based on the above, the Adminstrator of the AMS has determined that this proposed action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is proposed to be amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

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

2. Section 915.306 is amended by revising paragraphs (a) and (b) to read as follows:

§ 915.306 Florida avocado grade, pack, and container marking regulation.

(a) No handler shall handle any variety of avocados grown in the production area unless:

(1) Such avocados grade at least U.S No. 2.

(2) Such avocados are in containers marked with a Federal-State Inspection Service lot stamp number.

(3) Such avocados handled to points outside the production area are in containers authorized under § 915.305.

(4) Such avocados when handled in containers authorized under § 915.305 are packed in accordance with standard pack.

(5) Such avocados when handled in containers authorized under § 915.305, except for those to export destinations, are marked with the grade of the fruit in letters and numbers at least one inch in height on the top and two sides of the lid of the container, effective each fiscal

year from the first Monday after July 15 until the first Monday after January 1.

(b) The provisions of paragraphs (a)(2), (a)(3), (a)(4), and (a)(5) of this section shall not apply to individual packages of avocados weighing four pounds or less, net weight, in master containers.

* * * * *

Dated: February 4, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-2974 Filed 2-6-91; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 1001 and 1002

[DA-91-001]

Milk in the New England and New York-New Jersey Marketing Areas; Notice of Proposed Suspension of Certain Provisions of the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend certain provisions of the New England and New York-New Jersey milk orders. The suspension actions were requested by seven cooperative associations representing producers who provide much of the milk supply for the two markets.

The proposed suspension actions would suspend the seasonal production incentive payment provisions of the two orders for 1991. The cooperatives' request states that the suspensions are necessary to ameliorate the impending collapse of farm-level milk prices in the two marketing areas by eliminating the deductions from producer prices in the months of March through June that would be made under the orders' seasonal incentive payment plans. The suspensions would also eliminate the fall incentive payments for the fall months of 1991.

DATES: Comments are due no later than February 21, 1991.

ADDRESSES: Comments (four copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on dairy farmers and would have no impact on regulated handlers.

This proposed rule has been reviewed by the 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.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the orders regulating the handling of milk in the New England and New York-New Jersey marketing areas is being considered for the months of March through November 1991:

1. In § 1001.61, suspension of the paragraphs (c) and (d).

2. In § 1002.71, suspension of paragraphs (c) and (d).

All persons who want to send written data, views of arguments about the proposed suspension should send four copies of them to the USDA/AMS/Dairy Division, Order Formulation branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 14th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 14 days because a longer period would not provide the time needed to complete the required procedures before seasonal incentive plan deductions would be required on payments for milk produced in March 1991.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would suspend for 1991 the provisions of the New England and New York-New Jersey Federal milk orders that require deductions from and additions to producer blend/uniform prices to be made for the purpose of encouraging dairy farmers to level out their production through the course of the year. The provisions provide for the deduction of 20 cents per hundredweight from the blend/uniform price paid to producers to be made for the month of March, 30 cents for April, and 40 cents for May and June. The funds retained from these deductions are then added to the pooled milk values under the two orders in the amounts of 25, 30, and 30 percent of the total deducted for the months of August, September and October, respectively. The remaining 15 percent plus interest earned on the aggregate funds is added for the month of November. By artificially depressing producer income in the spring and enhancing it above otherwise prevailing levels in the fall, the provisions provide an incentive to producers to level out the seasonality of milk production to more closely reflect fluid milk demand patterns.

The suspension actions were requested by seven major cooperative associations representing dairy farmers shipping to handlers regulated by the Federal milk marketing orders for the New England and New York-New Jersey marketing areas. The cooperative associations proposing the suspension are Agri-Mark, Inc., Atlantic Dairy Cooperative, Inc., Cabot Farmers Cooperative Creamery Company, Dairylea Cooperative, Inc., Eastern Milk Producers Cooperative Association, Inc., St Albans Cooperative, Inc., and Upstate Milk Producers Cooperative. In total, the cooperatives represent 80 percent of the producers whose milk is pooled under the New England order, and 32 percent of the producers shipping to handlers regulated under the New York-New Jersey order. The request for the suspension stated that 90 percent of the producers in the 2 markets support the requested suspension.

The basis for the suspension request is the recent marked decline in the Minnesota-Wisconsin price, a price series on which Federal order prices are based. According to the suspension request, projected seasonal increases in milk supplies this spring will further depress the Minnesota-Wisconsin price to or below the support level of $9.90 per hundredweight. The cooperatives' request states that such an unprecedented collapse in milk prices to levels below the cost of production will place most family dairy farm operations in a serious loss situation, force many out of business, and severely depress the economies of rural communities throughout the region. Proponents of the suspension state that the further reduction of pay prices to producers this spring due to operation of the seasonal incentive plan, beyond that resulting from anticipated supply-demand conditions and occurring at a time when farm cash requirements are at their seasonal peak, would accentuate the

drastic financial crunch expected from the collapse in milk prices in the coming spring. Proponents express their continuing support for inclusion of seasonal incentive payment provisions in the two orders beyond 1991, and state that a one-year lapse in the operation of the provisions is not likely to have a significant effect on the continued leveling of seasonal production patterns in the region.

List of Subjects in 7 CFR Parts 1001 and 1002

Milk marketing orders.

The authority citation for 7 CFR parts 1001 and 1002 continues to read as follows:

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

Signed at Washington, DC, on February 4, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91–2976 Filed 2–6–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90–ASO–23]

Proposed Amendment to Control Zone, Owensboro, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: NPRM; correction.

SUMMARY: On Wednesday, December 26, 1990, a Notice of Proposed Rulemaking was published in the **Federal Register** (55 FR 53002), Proposed Amendment to Control Zone, Owensboro, KY. The Airspace Docket was erroneously listed as Airspace Docket No. 90–ASO–23. This action corrects this mistake. The correct number is 90–ASO–33.

FOR FURTHER INFORMATION CONTACT: James G. Walters (404) 763–7646.

Issued in East Point, Georgia, on January 7, 1991.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91–2766 Filed 2–6–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[IA–28–90]

RIN 1545–AO86

Deposits of Employment Taxes; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (IA–28–90), which was published on Friday, January 4, 1991, (56 FR 395). These proposed regulations relate to the deposit of Federal employment taxes (including railroad retirement taxes).

FOR FURTHER INFORMATION CONTACT: Vincent G. Surabian 202–566–5985 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction, which was originally adopted on January 13, 1959, by T.D. 6354 and reflected in § 31.6302(c)–1 of the Employment Tax Regulations was amended several times thereafter. That section currently sets forth a methodology for determining a deposit obligation based on an employer's undeposited FICA and withheld income taxes at the close of a deposit period. Regulation § 31.6302(c)–2 was originally adopted on December 20, 1960, by T.D. 6516 and amended several times thereafter. That section provides similar rules with respect to railroad retirement taxes. Section 226 of the Railroad Retirement Solvency Act of 1983, Public Law No. 98–76, 97 Stat. 411, provides that the times for making deposits prescribed under section 6302 of the Internal Revenue Code with respect to railroad retirement taxes shall be the same as the times prescribed for FICA and withheld income taxes.

Need for Correction

As published, the proposed regulations contain typographical errors that, if not corrected, might cause confusion to taxpayers and practitioners.

Correction of Publication

Accordingly, the publication of the proposed regulations (IA–28–90) which was the subject of FR Doc. 91–6, is corrected as follows:

§ 31.6302 [Corrected]

1. On page 396, third column, in § 31.6302(c)–1(a)(1)(ii)(*b*), under Example 2, line 10, the language "with respect to wages paid is $2,800. Since D" is corrected to read, "with respect to wages paid is $2,800. Since E".

§ 31.6302 [Corrected]

2. On page 397, second column, in § 31.6302(c)–1(a)(1)(ii)(*d*), line 1, the language "1(a)(1)(ii)–(*c*), and later, within the same" is corrected to read "1(a)(1)(ii)(*c*), and later, within the same".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–2833 Filed 2–6–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 816, and 817

Surface Mining; Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Standards; Hydrologic Balance

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

ACTION: Notice of public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior proposed a rule that would govern protection of the prevailing hydrologic balance at surface and underground mining operations through the use of best technology currently available. The proposed rule would allow alternative sediment control measures as best technology currently available for arid and semi-arid regions of the United States; in the humid regions, the rule would require siltation structures. Alternative sediment control measures will have to be approved by OSM based on information provided by the States that shows such measures will meet the standards in the Surface Mining Control and Reclamation Act. The comment period on the proposed rule has been extended to February 28, 1991. OSM will conduct a public hearing in Denver, Colorado on the proposed rule.

DATES: The public hearing is scheduled for February 26, 1991, at 10 a.m.

ADDRESSES: The public hearing will be held at the following location: Office of

Surface Mining, Western Support Center, Large Conference Room, 2nd Floor of the Brooks Towers, 1020 15th Street, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Douglas Growitz, PHG, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., room 5101–L, Washington, DC 20240: Telephone (202) 343–1507 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: OSM proposed a rule in the November 13, 1990, **Federal Register** which would govern protection of the prevailing hydrologic balance at surface and underground mining operations through the use of best technology currently available (55 FR 47430). The notice announced a public comment period on the proposed rule closing January 14, 1991. On January 14, 1991, (56 FR 1375) a notice was published which extended the comment period to February 28, 1991. Public interest in the proposed rule has continued at a very high level. OSM has received requests to hold a public hearing. As a result, OSM has scheduled a public hearing for February 26, 1991, at 10 a.m. at the Office of Surface Mining, Western Support Center, Large Conference Room, 2nd Floor of the Brooks Towers, 1020 15th Street, Denver, Colorado.

Dated: February 1, 1991.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy.

[FR Doc. 91–2854 Filed 2–6–91; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL 3902–8]

Underground Injection Control, Class II, Wells; Intent to Form an Advisory Committee to Negotiate Amendments to Regulations

AGENCY: Environmental Protection Agency

ACTION: Request for comments.

SUMMARY: EPA is considering establishing an Advisory Committee under the Federal Advisory Committee Act (FACA). The Committee's purpose would be to negotiate amendments to the Underground Injection Control (UIC) regulation governing injection wells associated with oil and gas production (Class II wells) under sections 1422 and 1425 of the Safe Drinking Water Act. The Committee would consist of representatives of parties that are substantially affected by the outcome of the proposed rule.

EPA requests public comment on whether:

- It should establish a Federal Advisory Committee;
- It has properly identified interests it believes are affected by the key issues listed above;
- Regulatory negotiation is appropriate for this rulemaking, and the extent to which the issues, and procedures are adequate and appropriate.

This Notice also announces that an organizational meeting will be held on February 12 and 13, 1991 from 9 a.m. to 5 p.m. at The Embassy Suites Hotel, 1250 22nd Street NW., Washington, DC to discuss the issues involved in the regulation of Class II wells, and whether the Committee should be formed and negotiations proceed. This meeting is open to the public and any parties interested in the negotiation are encouraged to attend.

DATES: EPA must receive comments and suggestions relating to this initiative by March 1, 1991.

ADDRESSES: Comments should be submitted to Francoise M. Braiser, Chief, Underground Injection Control Branch (WH–550E), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For information pertaining to the establishment of the negotiation committee and associated administrative matters contact: Chris Kirtz, Director, Regulatory Negotiation Project, Regulatory Management Division, U.S. EPA (PM–223), 401 M Street SW., Washington, DC 20460, telephone (202) 382–7565.

For information pertaining to the regulation of Class II injection wells and the regualtory issues to be addressed in the negotiation, contact: Jeffrey B. Smith, Underground Injection Control Branch (WH–550E), U.S. EPA, 401 M Street SW., Washington, DC 20460, telephone (202) 382–5586.

SUPPLEMENTARY INFORMATION:

Outline of Notice

I. EPA's Regulatory Negotiation Project
II. Amendments to the Underground Injection Control Regulations for Class II Wells
  A. Need for Rule Revision
  B. Selection as a Negotiation Item
  C. Potential Interests and Participants
III. Formation of the Committee
  A. Procedure for Establishing an Advisory Committee
  B. Participants
  C. Requests for Representation
  D. Final Notice
  E. Tentative Schedule
IV. Negotiation Procedures
  A. Facilitator
  B. Good Faith Negotiation
  C. Administrative Support and Meetings
  D. Committee Procedures
  E. Defining Consensus
  F. Failure of the Advisory Committee to Reach Consensus
  G. Record of Meetings

I. EPA's Regulatory Negotiation Project

EPA conducted its first regulatory negotiations in 1983 and 1984 to explore and demonstrate the value of negotiation and other consensus-building techniques for developing better regulations which could be implemented in a less adversarial setting. The Agency has now conducted eight negotiated rulemaking proceedings.

In November 1990, President Bush signed the Negotiated Rulemaking Act of 1990. This Act establishes a framework for the conduct of negotiated rulemaking. This Notice and the procedures described herein are consistent with the framework described in the Act.

Negotiations are conducted through Advisory Committees chartered under the Federal Advisory Committee Act (FACA). The goal of the Committee is to reach consensus on the language or issues involved in a rule. If consensus is reached, it is used as the basis of the Agency's proposal. All requirements of the Administrative Procedure Act and other applicable statutes continue to apply.

EPA has developed criteria for evaluation of potential items for negotiation. To qualify under EPA's selection criteria, an item must:

- Be planned for proposal;
- Have a relatively small number of identifiable parties, in an appropriate balance and mix, who have a good faith interest in negotiating;
- Present a limited number of related issues, for which sufficient information is available for resolution; and
- Have a time factor that lends some urgency to reaching consensus.

The eight negotiations conducted to date have aided the Agency in better defining the issues and in crafting better approaches. The eight regulatory negotiations were:

- Non-conformance Penalties under the Clean Air Act (CAA), as amended; Final rule: August 30, 1985.
- Emergency Pesticides Exemptions under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); Final rule: January 15, 1986.
- Farmworker Protection Standards for Agricultural Pesticides under the Federal Insecticide, Fungicide and Rodenticide Act; Proposed rule: July 8, 1988.

- Asbestos Containing Materials in Schools under the Asbestos Hazard Emergency Responsibility Act of 1986 (AHERA); Final rule: October 30, 1987.
- New Source Performance Standards for Woodburning Stoves under the Clean Air Act; Final rule: February 26, 1988.
- Underground Injection of Hazardous Waste under the Hazardous and Solid Waste Amendments of 1984 (HSWA); Final rule: July 26, 1988.
- Minor Permit Modifications under the Resource Conservation and Recovery Act (RCRA); Final rule: September 28, 1988.
- Fugitive Emissions from Equipment Leaks under the Clean Air Act; Committee agreement: December, 1990.

In December 1986, the Program Evaluation Division of EPA's Office of Policy Planning and Evaluation completed an assessment of the regulatory negotiations program. The study confirmed that negotiation is especially appropriate in situations which involve the resolution of a limited number of related issues, none of which involve fundamental questions of value or extremely controversial national policy. The study further condlued that:

- Negotiated rulemaking can produce rules that are more pragmatic with better environmental results while still meeting statutory requirements.
- Negotiated rules are also more likely to be acceptable to the affected industries, the public interest sector, and state and local governments involved in developing them.
- Negotiation may also result in earlier implementation of a rule by reducing the time it takes to proceed from proposed to final rulemaking.

EPA believes that the benefits to all parties of regulatory negotiation are substantial, and is committed to continued use of regulatory negotiation and other consensus-based processes for rulemaking when appropriate.

II. Amendments to the Underground Injection Control Regulations for Class II Wells

A. Need for Rule Revision

The Agency has been involved in a series of efforts in the last five years which have lead to a re-examination of the regulations governing Class II wells. These regulations are directly applicable in states where EPA implements the program and form the basis for judging whether State programs are effective in protecting underground sources of drinking water and can obtain primary enforcement responsibility to administer the UIC program under section 1425 of the SDWA.

At this time, EPA believes that there are two issues which possibly warrant amendments to the current regulations. First, the Agency's Report to Congress on oil and gas production wastes published in 1987 identified as an issue the continued use of rudimentary construction practices in some States. Similarly, the Mid-Course Evaluation (MCE) of the UIC Class II program conducted by the EPA in 1988 and 1989 identified the need to re-evaluate the regulations as they pertain to construction requirements, particularly with respect to the level of protection afforded various USDWs.

Second, the MCE recommended that the Agency study the risks posed by abandoned oil and gas wells in the zone of influence of active injection wells, to determine whether additional controls were needed. This recommendation was echoed by a GAO report published in July, 1989, which concluded that the EPA Administrator should establish regulations and/or guidance to make existing wells subject to "area of review" requirements to deal with the issue of abandoned wells. The Agency is therefore considering amendments to 40 CFR 146.22 for Construction Requirements and to 40 CFR 146.24 as it pertains to the Area of Review requirement.

B. Selection as a Negotiation Item

EPA believes that amendments to the Class II regulations in the two areas noted above may be appropriate for development through the regulatory negotiation process. EPA has made a preliminary inquiry of potential parties and representatives of identified interests to determine if this item satisfies EPA's selection criteria for negotiated rulemaking. On the basis of this preliminary inquiry, EPA believes that these items meet its selection criteria and that negotiations can be successful. Affected interests are small in number, and EPA's initial contacts indicate that an appropriate balance and mix of groups will be willing to participate in good faith.

C. Potential Interests and Participants

EPA has tentatively identified the following list of possible interests and parties:

—Petroleum producing industry
—State regulatory agencies
—Environmental Interest Groups
—Other Federal agencies (DOE, DOI)

III. Formation of the Negotiating Committee

A. Procedure for Establishing an Advisory Committee

As a general rule, an agency of the federal government is required to comply with the requirements of FACA when its establishes or uses a group which includes non-federal members as a source of advice. Under FACA, an Advisory Committee is established only after both consultation with GSA and receipt of a charter. EPA has prepared a charter and has initiated the requisite consultation process. Only upon the successful completion of this process and the receipt of the approved charter will EPA form the Committee and commence negotiations.

B. Participants

The number of participants in the group is estimated to be about 15. The maximum number of participants would be 25. A number larger than this could make it difficult to conduct effective negotiations. One purpose of this Notice is to help determine whether the standard that EPA is developing would substantially affect interests not adequately represented by the proposed participants. We do not believe that each potentially affected organization or individual must necessarily have its own representative. However, we firmly believe that each interest must be adequately represented. Moreover, we must be satisfied that the group as a whole reflects a proper balance and mix of interests.

C. Requests for Representation

If, in response to this Notice, an additional individual or representative of an interest requests membership or representation in the negotiating group, the Agency, in consultation with the facilitator, will determine whether that individual or representative should be added to the group. EPA will make that decision based on whether the individual or interest:

- Would be substantially affected by the rule;
- Is already adequately represented in the negotiating group.

D. Final Notice

After evaluating the results of the organizational meeting, and reviewing any comments on this Notice and requests for representation, EPA will issue a final Notice. That Notice will announce the establishment of a Federal Advisory Committee and the date of the first meeting, unless (1) EPA decides, based on comments and other relevant considerations, that such action is inappropriate, or (2) in the event EPA's charter request is disapproved. The negotiation process will begin once the Committee is appropriately chartered and a Notice is published in the **Federal Register.**

E. Tentative Schedule

EPA will hold an organization meeting on February 12, 1991 and February 13, 1991 from 9 am until 5, at The Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC. This meeting is open to the public, and all potential participants are encouraged to attend.

The purpose of this meeting is to: discuss whether negotiations should proceed, and if so, consider what issues and topics should and should not be covered, answer questions, and address any other procedural issues which may arise.

If an adequate mix and balance of parties attending the organizational meeting is interested in participating in a negotiation, and the charter approved, EPA would hold the first formal negotiating session of the Advisory Committee approximately one month (mid-March, 1991) after the organizational meeting. At this meeting, participants would complete action on any procedural matters outstanding from the organizational meeting, determine how best to address the principal issues, and initiate information gathering and research required to address these issues.

Subsequent meetings of the Committee would be held at approximately one month intervals in Washington, DC.

Though EPA has not set a final deadline for completion of the negotiation, it anticipates the negotiations will take at least six months. The Agency intends to terminate the activities of the Committee if it does not appear likely to reach consensus on a schedule that is consistent with Agency rulemaking needs.

IV. Negotiation Procedures

The following procedures and guidelines will apply to the Committee, if formed, unless they are modified as a result of comments received on this Notice or during the negotiating process.

A. Facilitator

EPA will use a neutral facilitator. The facilitator will not be involved with the substantive development or enforcement of the regulation. The facilitator's role is to:

- Chair negotiating sessions;
- Help the negotiation process run smoothly; and
- Help participants define and reach consensus.

B. Good Faith Negotiation

Since participants must be willing to negotiate in good faith and be authorized to do so, each organization must designate a senior official to represent its interests. This requirement applies to EPA as well. Francoise M. Brasier, Chief, Underground Injection Control Branch, Office of Drinking Water, will be EPA's representative.

C. Administrative Support and Meetings

EPA's Regulatory Management Division will supply logistical, administrative and management support. Meetings will be held in the Washington area. To support negotiations, EPA has pledged funds to a resource pool which the National Institute for Dispute Resolution will administer. The parties may use the funds for such activities as training, technical support, and other assistance which the Committee deems useful. To give committee members maximum freedom, subject to any applicable legal constraints, they will determine the procedures under which requests for funds will be made and approved.

D. Committee Procedures

Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, the members will establish the detailed procedures for Committee meeting which they consider most appropriate.

E. Defining Consensus

The goal of the negotiating process is consensus. In the negotiations completed to date, consensus has meant that each interest concurs in the result. We expect the participants to fashion their own working definition of this term.

F. Failure of Advisory Committee to Reach Consensus

In the event the Committee is unable to reach consensus, EPA will proceed to develop its own approach. Parties to the negotiation may withdraw at any time. If this happens, the remaining Committee members and the Agency will evaluate whether the Committee should continue.

G. Record of Meetings

In accordance with FACA's requirements, EPA will keep a record of all Advisory Committee meetings. This record will be placed in the public docket for this rulemaking. EPA will announce Committee meetings in the **Federal Register**. Such meetings will be open to the public.

Dated: February 1, 1991.

Michael B. Cook,

Director, Office of Drinking Water.

[FR Doc. 91–2801 Filed 2–6–91; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[PP 0E3857, PP 0E3873, PP 0E3881/P520; FRL–3874–3]

Pesticide Tolerances for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for residues of the herbicide glyphosate and its metabolite in or on the following raw agricultural commodities: cocoa beans, genip, and cherimoya. The proposed regulation to establish maximum permissible levels for residues of the herbicide in or on the commodities was requested in petitions submitted by the Interregional Research Project No.4 (IR-4).

DATES: Comments, identified by the document control number (PP 0E3857, PP 0E3873, PP 0E3881/P520), must be received on or before March 11, 1991.

ADDRESSES: By mail, submit written comments to: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H-7505C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW.,

Washington, DC 20460. Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4, (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted the listed pesticide petitions (PP's) to EPA on behalf of the named Agricultural Experiment Stations.

These petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the combined residues of the herbicide glyphosate (N-phosphonomethyl)glycine) and its metabolite amino-methylphosphonic acid (AMPA) in or on the raw agricultural commodities as follows:

1. *PP 0E3857.* On behalf of the Agricultural Experiment Station of Hawaii, in or on cocoa beans at 0.2 part per million (ppm).

2. *PP 0E3873.* On behalf of the Agricultural Experiment Station of Puerto Rico, in or on genip at 0.2 ppm.

3. *PP 0E3881.* On behalf of the Agricultural Experiment Station of California, in or on cherimoya at 0.2 ppm.

The data submitted in the petitions and other relevant material have been evaluated. The pesticide is considered useful for the purposes for which the tolerances are sought. The toxicological data considered in support of the proposed tolerances include:

1. A 1-year dog feeding study with a systemic no-observed-effect level (NOEL) of 500 milligrams (mg)/kilogram (kg)/day (highest dose tested).

2. A chronic feeding/carcinogenicity study in rats with a systemic NOEL of 31 mg/kg/day, which was negative for carcinogenic potential under the conditions of the study at all feeding levels tested (0, 3, 10, and 31 mg/kg/day). Although the rat study meets the requirement for a chronic feeding study, it does not satisfy guideline requirements for a carcinogenicity study. There is no evidence that the highest dose tested (31 mg/kg/day) was a toxic or maximum-tolerated-dose (MTD).

3. A three-generation reproduction study in rats with a NOEL of 10 mg/kg/day and an LEL of 30 mg/kg/day (renal focal tubular dilation in male F3b weanlings).

4. A rat teratology study, negative for teratogenic effects at 3,500 mg/kg/day (highest dose tested), with a maternal and fetotoxic NOELs of 1,000 mg/kg/day.

5. A rabbit teratology study, negative for teratogenic effects at 350 mg/kg/day (highest dose tested), with a maternal NOEL of 175 mg/kg/day and a developmental toxicity NOEL of 350 mg/kg/day.

6. Mutagenicity studies as follows: chromosomal aberration *in vitro* (no aberrations in Chinese hamster ovary cells were caused with or without S-9 activation); DNA repair in rat hepatocytes (negative); *in vivo* bone marrow cytogenic in rats (negative); rec-assay with *B. subtilis* (negative up to 2,000 micrograms of test material per disk); reverse mutation with *S. typhimurium* (negative); and a dominant-lethal test in mice (negative).

Additionally, a 2-year carcinogenicity study in CD-1 mice has been completed and reviewed by the Agency. Feeding levels in this study were 1,000, 5,000, and 30,000 ppm (equivalent to 150, 750, and 4,500 mg/kg/day, respectively). The NOEL for nonneoplastic chronic effects was established at 5,000 ppm. In this study, glyphosate produced an equivocal carcinogenic response, possibly causing a slight increase in the incidence of renal tubular adenomas (a benign tumor of the kidney) in male mice at the highest dose tested (30,000 ppm). Because of the equivocal nature of the carcinogenic response in mice and the lack of an acceptable carcinogenicity study in rats, the Agency referred the issue to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Science Advisory Panel (SAP) for a weight-of-the-evidence recommendation. After reviewing all available evidence, the SAP concluded that the carcinogenic potential of glyphosate could not be determined from the available information and recommended that the mouse and/or rat carcinogenicity studies be repeated to clarify unresolved questions. Subsequently, the Agency classified glyphosate as a "Group D Carcinogen" (inadequate evidence of carcinogenicity) and requested a repeat of the carcinogenicity study in rats. The study has been received at the Agency and is currently undergoing scientific review.

Current Agency policy is to establish tolerances for significant new uses of glyphosate on a case-by-case basis. Tolerances that change the theoretical maximum residue contribution (TMRC) by more than 1 percent are generally considered significant.

The reference dose (RfD), based on the NOEL of 10 mg/kg/day from the rat reproduction study and using an uncertainty factor of 100, is calculated to be 0.1 mg/kg of body weight (bw)/day. The TMRC from published and pending tolerances is calculated to be 0.01 mg/kg/day, or 10 percent of the RfD. There are no consumption estimates in the Agency database for either genip or cherimoya for any population group other than the overall U.S. population, and exposures for this group from these two food items are estimated to be negligible, computed by the Agency's dietary risk exposure system to be less than 0.000001 mg/kg/day. The estimated dietary exposure contribution from cocoa bean, (represented as cocoa butter and chocolate) is calculated to be 0.000009 mg/kg/day, or 0.008 percent of the RfD, an insignificant increase.

The nature of the residue is adequately understood, and an adequate analytical method, gas chromatography using a flame photometric detector, is available for enforcement purposes. An analytical enforcement method has been published in the *Pesticide Analytical Manual* (PAM), Vol. II. No secondary residues in meat, milk, poultry, or eggs are expected since the commodities listed are not considered livestock feed commodities. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.364 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 0E3857, PP 0E3873,

PP 0E3881/P520]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

List of Subjects in 40 CFR Part 180

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

Dated: January 17, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.364(a) is amended by adding and alphabetically inserting the raw agricultural commodities cherimoya, cocoa beans, and genip, to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Cherimoya	0.2
* * * * *	
Cocoa beans	0.2
* * * * *	
Genip	0.2
* * * * *	

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[FR Doc. 91-2964 Filed 2-6-91; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

42 CFR Ch. I

Request for Comments on Plans to Implement Pub. L. 101-616, "Transplant Amendments Act of 1990", Title I—National Bone Marrow Donor Registry

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Request for comments.

SUMMARY: The National Heart, Lung, and Blood Institute (NHLBI) of the National Institutes of Health (NIH) seeks written comments from the public concerning plans to implement Title I of Public Law 101-616, "Transplant Amendments Act of 1990," which added section 379 of the Public Health Service Act to authorize the Secretary to establish and maintain a National Bone Marrow Donor Registry. Section 379 further provides that the Secretary shall establish and enforce criteria, standards, and procedures for entities participating in the National Marrow Donor Program, including the National Registry.

DATES: Comments must be received in writing on or before March 11, 1991 at the address provided below to assure consideration.

ADDRESSES: Comments may be mailed or delivered to: Paul R. McCurdy, MD, Special Assistant for Clinical Hematology, Division of Blood Diseases and Resources, NHLBI, room 516, Federal Building, 7550 Wisconsin Avenue, Bethesda, MD 20892.

FOR FURTHER INFORMATION CONTACT: Paul R. McCurdy, MD, Special Assistant for Clinical Hematology, Division of Blood Diseases and Resources, NHLBI, room 516, Federal Building, 7550 Wisconsin Avenue, Bethesda, MD 20892, (301) 496-6387.

SUPPLEMENTARY INFORMATION: The NHLBI seeks written comments concerning plans to implement Title I of Public Law 101-616, "Transplant Amendments Act of 1990," which added section 379 of the Public Health Service Act. This law states in part:

(c) CRITERIA, STANDARDS, AND PROCEDURES.—Not later than 180 days after the date of enactment of this part, the Secretary shall establish and enforce, for entities participating in the program, including the Registry, individual marrow donor centers, marrow donor registries, marrow collection centers, and marrow transplant centers—

(1) quality standards and standards for tissue typing, obtaining the informed consent of donors, and providing patient advocacy;

(2) donor selection criteria, based on established medical criteria, to protect both the donor and the recipient and to prevent the transmission of potentially harmful infectious diseases such as the viruses that cause hepatitis and the etiologic agent for Acquired Immune Deficiency Syndrome;

(3) procedures to ensure the proper collection and transportation of the marrow;

(4) standards that require the provision of information to patients, their families, and their physicians at the start of the search process concerning—

(A) the resources available through the Registry;

(B) all other marrow donor registries meeting the standards described in this paragraph; and

(C) in the case of the Registry—

(i) the comparative costs of all charges by marrow transplant centers incurred by patients prior to transplantation; and

(ii) the success rates of individual marrow transplant centers;

(5) standards that—

(A) require the establishment of a system of strict confidentiality of records relating to the identity, address, HLA type, and managing marrow donor center for marrow donors and potential marrow donors; and

(B) prescribe the purposes for which the records described in subparagraph (A) may be disclosed, and the circumstances and the extent of the disclosure; and

(6) in the case of a marrow donor center or marrow donor registry participating in the program, procedures to ensure the establishment of a method for integrating donor files, searches, and general procedures of the center or registry with the Registry."

These "Criteria, Standards, and Procedures" (CSP) are expected to have general applicability and it is planned that the CSP will be promulgated through formal rulemaking procedures. Plans are to use applicable portions of the "Standards of the National Marrow Donor Program" (rev. 5th ed. Sept, 1990) as a starting point for developing the mandated "Criteria, Standards, and Procedures." Excerpts from these Standards, which are under construction, follow:

Standards of the National Marrow Donor Program, Fifth Edition, Revised September, 1990

1.000 General.

1.200 The words "must" and "shall" indicate that deviations are not acceptable. "Should" and "may" are used for recommendations which are not mandatory.

2.000 Criteria for Participating Donor Centers.

2.200 Center must have demonstrated experience in donor management activities, including counseling, confidentiality issues and medical screening.

2.300 Center must have access to the following accredited facilities:

2.310 Blood bank for collection of autologous blood.

2.320 Laboratory for infectious disease markers and other tests defined by the Standards.
2.330 Blood typing laboratory.
2.340 HLA typing laboratory for HLA–A, B typing newly recruited donors.
2.350 NMDP Collection Center.
2.700 Center must have a Donor Advocate identified and must offer this as an option to all donors.
2.900 Center must be willing to merge donor data on a routine basis with the NMDP central data file (Registry).
3.000 Recruitment of unrelated donors of bone marrow.
3.100 Who may be approached.
3.110 Donors must be volunteers who provide fully informed consent.
3.120 Donors must meet current standards for blood donors as established by American Association of Blood Banks with the following exceptions.
3.121 There is no minimum weight requirement for prospective donors.
3.123 Prospective donors must have passed their 18th birthday but must not have passed their 56th birthday.
3.124 Prospective donors who have traveled to malarial areas may be recruited.
3.130 The identification of persons HLA typed for some other purpose may not be released for purposes of recruitment into the unrelated marrow donor program unless their permission has been obtained by the group which obtained permission for the HLA typing.
3.200 Approach to the prospective donor.
3.210 Before a consent to have the donor's HLA type listed may be obtained, the donor must be given a general explanation of the indications for and results of marrow transplantation, the reasons for using unrelated donors, the process of marrow donation, and the risks associated with marrow donation.
3.211 The process and risks of marrow donation need not be explained in detail at this point, since this will be done when the prospective donor is later found to be a potential match for a specific recipient.
3.220 There must be no undue pressure on the prospective donor.
3.221 The prospective donor must be given ample opportunity to ask questions and to consider the decision.
3.222 The prospective donor must be assured of the right to decline or to withdraw at any time without prejudice.
3.230 The consent of the prospective donor may be in writing or may be obtained over the telephone.
3.231 If obtained over the telephone, a notation in the record must be made that telephone consent was obtained, the date, and the signature of the person obtaining the consent.
3.232 The donor may be asked to supply a written consent as soon as possible, but this is not a requirement.
3.233 The donor may be listed in the Registry without waiting for the written consent.
4.000 Assurance of donors' privacy.
4.100 The donor's identity shall be known only to those few staff members of the donor center with a need to know.
4.110 Identifying records shall be in a locked file accessible only to those with a need to know.
4.120 All other files, including laboratory records, shall identify the donor by a code number only.
4.130 The donors shall be identified to the National Coordinating Center by code number only.
4.200 The donor's identification shall be released to others only when there is a clear need for individuals outside the donor center to have access to it, and only with the consent of the donor.
4.210 The donor's identification may be released to the Coordinating Center for the purpose of obtaining insurance for the donor.
4.220 The donor's identification and address may be released to the Coordinating Center for the purpose of direct informational mailing.
4.221 This must be done in such a way that the identification is not linked to the Donor Identification Number or HLA-type.
4.222 Release of this information to the Coordinating Center will be at the discretion of the Donor Center.
4.300 The donor's HLA typing data shall not be used to commit the donor to programs for which the donor has not given explicit approval.
4.400 Unless both donor and recipient have expressed a wish to meet each other, they should not be encouraged to do so.
4.410 The donor and the recipient should meet only if both have expressed a strong desire to do so.
4.420 The meeting should be deferred, if possible, until the recipient has recovered from the most visible complications of transplantation.
4.430 The donor should be prepared before the meeting to anticipate evidence that the recipient is ill.
5.000 Further tests when a partial HLA match with a recipient has been identified.
5.100 Obtain Informed Consent for Testing.
5.110 The donor must sign a consent form agreeing to provide a blood sample for further tests (generally DR typing and mixed lymphocyte cultures).
5.120 The consent form should state the minor risks of blood collection.
5.130 A new consent form must be signed if the donor is matched at a later point for a different recipient.
5.200 Infectious Disease Testing, ABO and Rh Typing at the Time of MLC Sample Collection.
5.210 The donor center must perform infectious disease testing of the donor on a blood sample obtained at the time MLC samples are collected. The testing must include: serologic test for syphilis (STS), hepatitis B surface antigen (HBsAg), antibody to hepatitis B core antigen (anti-HBc), alanine aminotransferase (ALT), antibody to the Human Immunodeficiency Virus (anti-HIV), antibody to the cytomegalovirus (anti-CMV), antibody to the Human T Lymphotropic Virus, Type I (anti-HTLV–I) and antibody to the Hepatitis C Virus (anti-HCV). Testing for the antibody to the Human Immunodeficiency Virus (anti-HIV) by Western Blot should be performed if the EIA test for this antibody is repeatedly reactive.
5.211 Infectious disease testing of all donors must be repeated, if results were from testing more than 30 days prior to marrow donation.
5.220 The ABO and Rh typing of the donor must be performed at this time if the donor center has not previously typed the donor.
5.230 The results of the infectious disease testing, and ABO and Rh typing, if performed, must be reported to the transplant center which requested the MLC sample.
5.231 Donors with a confirmed positive test for HBsAg or anti-HIV should not be used.
5.232 The decision to use donors with other abnormal findings should be left to the transplant physician and the patient (See Section 7.411).
5.300 Repeat HLA Typing by Transplant Center.
5.310 The HLA–A, B and DR typing of any donor selected for marrow donation must be confirmed by the transplant center which will perform the transplant.
5.311 Notification of the results of the HLA typing performed by the transplant center must be reported to the Coordinating Center.
5.400 Decisions on donor acceptability should be made promptly so donors inappropriate for that patient may be returned to the active search files.
6.000 Donor Information Session.
6.100 The Donor Advocate: Prior to obtaining the consent of the donor found to be histocompatible and medically eligible, the donor must be aware of the opportunity to discuss his/her decision with a Donor Advocate.
6.110 The Donor Advocate must be knowledgeable about marrow transplantation and the risks to the donor.
6.120 The Donor Advocate should be selected because of training or experience in counseling. The Donor Advocate need not be a physician.
6.130 The Donor Advocate should not be an employee of the donor center and must not be a member of a marrow transplant team.
6.140 The Donor Advocate must have no personal interest in whether or not the transplant is performed.

6.200 The prospective donor must be counseled as follows.

6.210 The prospective donor must be given more detailed information about the further tests to be done, the procedure of marrow donation, the risks of marrow donation, and the period of time which the donor may have to commit.

6.220 It is strongly recommended that the spouse or other significant friends or family of the donor be included in these discussions.

6.230 The prospective donor must again be assured of his/her right to withdraw at any time up to induction of anesthesia for the marrow collection.

6.240 The prospective donor must also be informed of the extreme risk of death for the recipient should the donor withdraw after the beginning of the recipient's immunosuppressive preparative regimen.

6.250 The prospective donor must be informed about the following:

6.251 The risks of anesthesia.

6.252 The risks and discomforts resulting from marrow donation.

6.253 The potential time lost.

6.254 The extent to which the donor's expenses will be compensated and by whom.

6.260 Following the counseling, the donor must express a willingness to continue the process before the medical evaluation may be scheduled.

7.000 Medical Evaluation of the Matched Prospective Donor.

7.100 A licensed physician must perform a complete medical history and physical examination, and must evaluate the results of the following tests: complete blood count, urinalysis, electrolytes, urea nitrogen, creatinine, bilirubin, serum protein electrophoresis, electrocardiogram and chest X-ray. Infectious disease testing may be repeated at the discretion of the physician.

7.110 Pregnancy is a contraindication to marrow donation.

7.200 This physician must be approved by the medical director of the donor center.

7.300 This physician shall not be a member of the transplant team of the center performing the transplant.

7.400 This physician must report the following in writing to the donor center.

7.410 Whether donor meets all requirements for volunteer blood donation as defined by the Standards of the American Association of Blood Banks.

7.411 Any deviation from blood donor health standards must be reported by the donor center to the coordinating center and the transplant center. (See section 5.232).

7.412 The decision to use donors with abnormal findings must be accompanied by the appropriate, informed written releases.

7.420 Whether the donor is a Class 1 anesthesia risk.

7.430 Whether there are any contraindications to marrow donation.

7.500 Final selection of a marrow donor shall not be done until the marrow collection team is satisfied that the donor meets its criteria for marrow collection and that the donor is fully committed to proceed.

7.510 Donor centers and their cooperating marrow collection centers shall establish written procedures for their interaction.

7.600 If more than eight weeks have elapsed since the complete physical examination, the marrow collection physician must take an interval history and perform an appropriate physical examination.

7.610 The history and physical must be completed prior to initiation of the recipient's preparative regimen.

8.000 Intent to Donate.

8.100 Once a donor has been found eligible to donate, the donor must sign an "Intent to Donate", expressing the donor's willingness to continue the process.

8.200 The Donor Center must notify the Coordinating Center that the donor has been found eligible and signed the "Intent to Donate."

9.000 Pre-Collection Communication.

9.100 A prescription for collection of the marrow must be signed by the responsible transplant physician and transmitted via the Coordinating Center through the donor center to the marrow collection center within two working days prior to initiating the preparative regimen for the recipient. Methods must be established to verify the identity of the donor.

9.110 A designated official from the center which will perform the marrow transplant must provide signed acknowledgement that the donor's ABO type, degree of HLA match, and test results are acceptable.

9.120 The donor center will specify whether the marrow is to be obtained at the site of the transplant or near the home of the donor.

9.130 The donor may refuse to go to the site selected.

9.200 The transplant physician, Donor Center medical director, and physician who will perform the collection must all agree on the volume of marrow to be collected from the donor as soon as possible after selection of the donor but no later than two working days prior to initiating the preparative regimen for the recipient.

10.000 Collection Center.

10.200 The marrow must be collected in a hospital accredited by the Joint Commission on Accreditation of Health Care Organizations.

10.300 The hospital must provide a surgical operating room and must have a medical intensive care unit.

10.400 Anesthesia must be provided under the supervision of a licensed, board-certified anesthesiologist.

10.500 The hospital must have irradiated blood components available in the event that homologous blood cannot be avoided.

10.600 The marrow collection team must be experienced and must collect marrow on a regular basis.

10.610 The team must consist of a responsible physician and at least one other trained ancillary person who have the experience and the equipment for marrow processing.

10.620 Sufficient experience and expertise for approval as a marrow collection team must be documented by one of the following:

10.621 The team is part of a transplant center approved for participation in the program, or

10.622 The team has performed at least 12 prior aspirations for transplantation with at least four in the previous 12 months.

10.630 The team must obtain a corrected marrow nucleated cell count of at least 2×10^8 nucleated cells/kg of recipient body weight in at least 75% of the aspirations.

10.631 In general this should be accomplished by withdrawing no more than 1500 ml of marrow.

10.632 The volume of marrow removed must not be so large as to require the transfusion of homologous blood.

10.700 One member of the marrow collection team must assume full responsibility for the donor, before, during and after the procedure.

10.710 He/she must agree that donor is acceptable for that procedure (along with the anesthesiologist).

10.720 The team must arrange for autologous donation of a number of autologous units in proportion to the anticipated volume of marrow to be harvested.

10.730 Homologous blood should be avoided when possible, and should be transfused to the donor only in situations of unexpected blood loss.

10.740 He/she must ensure the donor's health is appropriate for discharge.

10.800 If marrow aspiration is not performed by a member of the transplant team, the transplant team may send an observer.

11.000 Pre-Collection Donor Blood Samples.

11.100 Pre-collection donor blood samples in addition to autologous units and samples needed to assess the physical well being of the donor must be limited to a maximum of 100 ml. in the month prior to marrow donation.

11.200 With the exception of autologous units and samples needed to assess the physical well being of the donor, the last pre-collection donor blood sample must be collected more than 10 days prior to marrow collection.

12.000 Marrow collection and processing.

12.100 Marrow collection.

12.110 The marrow should be collected with a large needle designed specifically for that purpose.

12.120 The marrow should be mixed with tissue culture medium containing heparin in quantities sufficient to prevent coagulation.

12.130 The syringes used to aspirate the marrow should be rinsed with the heparin-tissue culture medium fluid.

12.140 Marrow obtained from unrelated donors should not be used for research unrelated to the needs of the recipient.
12.200 Marrow processing.
12.210 The marrow must be filtered to ensure single cell suspensions using sterile filters made of materials nonreactive with blood.
12.220 Addition of preservatives or antibiotics is not recommended and must never be done without the agreement of the transplant service.
12.221 Exception: ACD solution may be added in a ratio of one part ACD to 8 parts of marrow suspension for storage periods longer than 8 hours.
12.230 Freezing of marrow is not recommended, at this time, and should not be done unless convincing data confirming successful results have been presented to the Standards Committee of the National Marrow Donor Program.
12.240 Additional processing, such as removal of T cells, incompatible red blood cells or plasma, should be done at the transplant center or in a laboratory designated by the transplant center.
12.250 No processing or the marrow shall be done by the collection center without consent of the transplant center.
13.000 Transport of marrow.
13.100 When marrow is not collected at the transplant site, every effort must be made to ensure that it arrives at the transplant site within 12 hours of collection.
13.110 The marrow must be hand carried by a suitably informed courier.
13.120 The marrow must be carried by the courier in the passenger compartment.
13.130 Plane or other reservations must be firm.
13.131 The weather reports at both airports should be checked.
13.132 Back-up reservations should be made.
13.133 There must be plans for alternative transport in an emergency.
13.140 The marrow must not be passed through X-ray irradiation devices designed to detect metal objects.
13.200 The container used to transport marrow must meet the following criteria:
13.210 The marrow must be in a hermetically sealed plastic bag containing ports which can be entered aseptically.
13.220 The marrow bag should be placed in an outer bag which is also sealed to prevent leakage.
13.230 The bag should be enclosed in a rigid container with insulating properties.
13.240 Wet ice may be used, at the discretion of the transplant service.
13.250 Dry ice must never be used.
13.300 The container should be labeled with the following:
13.310 The words "HUMAN BONE MARROW".
13.320 The National Marrow Donor Program donor identification number.
13.330 Collection date and time (time zone).
13.340 Anticoagulant used and volume.
13.350 Other additives used.
13.360 Intended recipient's name, hospital and (if available) hospital number.
13.370 Name of individual designated to receive the marrow, hospital or transplant center, telephone number.
13.380 "Warning: Contains human tissue for transplantation. Do not place near heat. Do not freeze. Do not delay delivery. Do not X-ray."
13.400 Documents accompanying marrow must contain:
13.410 Donor identification number.
13.420 Donor ABO and Rh types.
13.430 The most recently available results of the following tests: Anti-HIV, HBsAg, anti-HBc, anti-HTLV–I, anti-HCV, anti-CMV, STS and ALT.
13.440 Volume of marrow and diluent.
13.450 Details of any bone marrow manipulation or treatment.
13.500 Every effort should be made to transfuse liquid stored marrow within 24 hours of collection.
14.000 Quality control of marrow.
14.100 The number of marrow nucleated cells collected must be calculated as follows:
14.110 The number of nucleated cells collected marrow and in the peripheral blood of the donor must be counted.
14.120 The number of marrow nucleated cells is obtained by subtracting the number of blood nucleated cells.
14.130 The number of marrow nucleated cells should exceed 2.0×10^8 per kg of recipient body weight.
14.131 Transplant services may require higher numbers depending on the recipient's diagnosis and treatment and on any intended further processing of the marrow.
14.200 Every marrow must be placed into culture for bacteria and fungi at the transplant center, employing aerobic and anaerobic conditions.
14.210 It is recommended that cultures be performed also at the collection site, with timely reports to the transplant center.
14.300 Quantitation of committed stem cells by culture is strongly recommended.
15.000 Subsequent donor contacts.
15.100 Following the marrow donation, the well-being of the donor must be ascertained by a member of the donor center.
15.110 A telephone call or direct conversation with the donor shall be made within 48 hours after the donor is discharged from the hospital.
15.120 The contact shall be repeated between five and seven days after the donor is discharged from the hospital.
15.130 If the donor has any abnormal complaints, the donor shall be referred to an appropriate source of medical help.
15.140 Contacts shall continue at intervals until the donor is free of complaints.
15.200 Subsequent demands on the donor.
15.210 In general the donor should not be expected to provide blood components for the recipient after the transplant.
15.211 An exception may occur when there is no other donor whose platelets will survive in the recipient's circulation.
15.212 The donor has the right to refuse consent.
15.220 The donor should not be asked to provide more marrow for an additional boost or retransplant for the same recipient.
15.230 Reuse of the same donor for a different recipient at a later time is not recommended until sufficient supporting information is available.
15.231 At least one year should elapse between donations.
15.232 Only if no other equally compatible donor is available.
16.000 Patient rights.
16.100 The transplant service has the responsibility to inform patients of the progress of searches for a compatible donor as reports are received from the Coordinating Center. These reports should, where appropriate, be transmitted through the patient's referring physician.
16.200 If a compatible donor is not found, based on the criteria of the transplant center, the patient should be informed of other options, including
16.210 Referral to approved transplant centers whose criteria for unrelated donor transplants are different.
16.220 Repeated search of the Registry as more donors are added.
16.230 Search of other registries.
17.000 Criteria for participating marrow transplant centers.
17.100 Experience.
17.110 Centers must have performed at least 10 allogeneic transplants per year during the previous 24 months and at least 30 in the previous five years.
17.120 The center director must have had two years' experience in an NMDP-accredited transplant center or in a center recognized by publications in peer reviewed journals to be capable and experienced. One of these years may be a period of training, but at least the previous year must be one in which the director had primary responsibility for the management of transplant recipients.
17.130 A dedicated transplant team must have been in place for a minimum of two years.
17.131 There must be a designated nursing unit for marrow transplantation.
17.200 Supporting services.
17.210 There must be an air handling system designed to prevent nosocomial infections disseminated from central heating/cooling systems.
17.220 There must be documented evidence of support by an HLA laboratory accredited by the American Society of Histocompatibility and Immunogenetics.
17.230 There must be documented evidence of adequate blood component support, including irradiation of blood components and CMV testing.
17.240 There must be documented evidence that radiation therapy support is available if needed.
17.300 Protocols for unrelated donor transplants must have been approved by a local Institutional Review Board.

The public is invited to submit written comments concerning the implementation of the National Bone Marrow Donor Registry, including possible use of specific criteria contained in this document, within the time period set forth above.

Dated: February 1, 1991.

William F. Raub,

Acting Director, NIH.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Endangered Species Convention: Amendments

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Request for information.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates trade in certain animal and plant species, which are listed in appendices to this treaty. Any nation that is a Party to CITES may propose amendments to Appendices I and II for consideration by the other Parties.

This notice announces plans by the Fish and Wildlife Service (Service) to consider proposals to be submitted by the United States to amend Appendices I and II. The Service invites information and comments from the public on animal or plant species that should be considered as candidates for U.S. proposals. Such proposals may concern the addition of species to Appendix I or II, the transfer of species from one appendix to another, or the removal of species from Appendix I or II, or for species to be registered as bred-in-captivity for commercial purposes.

At past CITES Animals Committee Meetings, the committee chairman has requested information from the Service on certain U.S. listed taxa under the Ten-Year Review process and on issues of nomenclature. The United States was to determine the extent that these species enter trade and whether they merit retention in the Appendices. These species of concern are: Harlequin quail (*Cyrtonyx montezumae montezumae* and *C. m. mearnsi*); the San Diego horned lizard (*Phrynosoma coronatum blainvillii*); Pearly mussels (6 species of the family Unionidae listed in Appendix II); the Mexican bobcat (*Felis rufa escuinapae*); and pronghorn antelope (*Antilocapra americana mexicana, A. a. peninsularis,* and *A. a. sonoriensis*). Similarly, the Plants Committee, chaired by the United States, is considering certain questions on the cactus genus *Turbinicarpus.* The Service will use the information and comments received in determining whether to develop proposals for the next regular meeting of the CITES Party Nations.

DATES: The Service will consider all information and comments received by April 22, 1991.

ADDRESSES: Comments, information and questions should be submitted to the Chief, Office of Scientific Authority; Mail Stop: Room 725, Arlington Square; U.S. Fish and Wildlife Service; Washington, DC 20240. Fax number (703) 358-2202. Express and messenger delivered mail should be addressed to the Office of Scientific Authority; room 750, 4401 North Fairfax Drive; Arlington, Virginia 22203. Comments and other information received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (phone 703-358-1708 or FTS 921-1708).

SUPPLEMENTARY INFORMATION: This is the first in a series of **Federal Register** notices about proposals to amend CITES Appendix I or II that will be considered at the eighth regular biennial meeting of the Parties. The purpose of this notice is to solicit information that will help the Service to identify: (1) Species that are candidates for addition, removal, or reclassification in the appendices, (2) Species that should be submitted as meeting bred-in-captivity criteria in accordance with CITES resolutions Conf. 6.21 and 7.10, (3) Ten-Year Review species for which there is no documented evidence of trade in the species, and (4) Nomenclatural issues. This request is not limited to species occurring in the United States. Any Party may submit proposals concerning wild animal or plant species occurring anywhere in the world, although U.S. proposals submitted for recent meetings of the Parties have focused on species native to the United States.

Background

CITES regulates import, export, reexport, and introduction from the sea of certain animal and plant species. The term "species" is defined in CITES as "any species, subspecies, or geographically separate population thereof". Each species for which trade is controlled is included in one of three appendices. The basic standards for including species in the appendices are contained in Article II of CITES. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that although not necessarily threatened with extinction may become so unless trade in them is strictly controlled. It also lists species (as look-alikes) that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control. Such listings frequently are required because of difficulty in distinguishing specimens of currently or potentially threatened species from other species at ports of entry. Further guidance on criteria for adding or deleting species in the Appendices is contained in several resolutions available from the Office of Scientific Authority (see addresses section).

For animals in Appendix I or II and plants in Appendix I, any readily recognizable part or derivative thereof is automatically included, by language in CITES, when the species is listed in the Appendices. All parts and derivatives of plants listed in Appendix II are included, with certain exceptions, by amendment and resolutions at several Conferences of the Parties. The standard exception is that the parts and derivatives usually not included (i.e., not regulated) for Appendix II plants are: Seeds, spores, pollen (including pollinia), tissue cultures, and flasked seedling cultures. Also see 50 CFR 23.23(d) for further exceptions and limitations. Appendix III includes species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties in controlling trade. The present notice concerns only Appendices I and II. The Parties have adopted a format for proposals to amend Appendix I or II, in order to ensure that certain types of information are provided. It is as follows:

A. Proposal
B. Proponent (nation)
C. Supporting statement
1. Taxonomy
   11. Class
   12. Order
   13. Family
   14. Genus, species or subspecies, including author(s) and year and checklist or authority being followed to describe the species
   15. Common name(s), when applicable, and French and Spanish

common names, if known
16. Code numbers, when applicable, e.g., International Species Inventory System (ISIS) number.
2. Biological data
21. Distribution (current and historical)
22. Population (estimates and trends), and relevant information on population
23. Habitat (trends)
3. Trade data
31. National utilization
32. Legal international trade
33. Illegal trade
34. Potential trade threats
341. Live specimens
342. Parts and derivatives
4. Protection status
41. National
42. International
43. Additional protection needs
5. Information on similar species (addressing the issue of similarity of appearance where appropriate)
6. Comments from countries of origin (other than proponent)
7. Additional remarks
8. References (published literature and other documents)

Possible Proposals

At previous CITES Animals Committee Meetings, the chairman requested information on certain listed U.S. species to determine volume of trade or validity of the taxon and whether these taxa merit inclusion in the Appendices under the criteria contained in several resolutions. The U.S. was to review the status of these listed species under the Ten-Year Review process and on issues of nonmenclature. The U.S. species of concern are: Six species of pearly mussels (Unionidae) and Appendix II, the San Diego horned lizard (*Phrynosoma coronatum blainvillii*); Harlequin quail (*Cyrtonyx montezumae montezumae* and *C. m. mearnsi*); the Mexican bobcat (*Felix rufa escuinapae*); and pronghorn antelope (*Antilocapra americana* ssp.).

According to the most recent taxonomic review (Turgeon *et al.* 1988), there are 297 taxa of the family Unionidae native to North America. Of the 297 North American taxa, 13 are believed to be extinct, 35 are listed as endangered under the U.S. Endangered Species Act (Act), and an additional 70 are candidates for listing under the Act. Currently, 26 species are listed in Appendix I and 6 species in Appendix II of CITES.

Presently, the Service has undertaken a review of the trade in freshwater Unionid mussels. The impetus for this study was the 1987 proposal by Switzerland to delist six Appendix II species of pearly mussels in the context of the Ten-year review of the CITES Appendices. At the Seventh Conference of the Parties, the Party nations rejected a proposal to remove these six species from Appendix II based on concerns regarding their taxonomic and biological status, look-alike problems with Appendix I species and current undocumented levels of international trade. The Service may consider a proposal listing additional taxa of Unionids to make the appendices of CITES more consistent with the listings under the Act and also for the purposes of look-alikes as to other presently listed species.

At the Washington Conference in 1973, *Cyrtonyx montezumae merriami* was proposed for listing in Appendix I and *C. montezumae montezumae* and *C. m. mearnsi* in Appendix II. At the Second Conference of the Parties in 1979, *C. m. merriami* was removed from Appendix I and the U.S. population of *C. m. mearnsi* from Appendix II. There is question as to the validity of the taxonomy of these two subspecies and there is little documented trade in the species. The United States, after consultation with the Mexican government, may submit a proposal to remove these two taxa from the CITES Appendices.

At the November 1988, Animals Committee Meeting in the context of the Ten-Year Review of the appendices, the United States was to revisit its position of retaining the San Diego horned lizard (*Phyrnosoma coronatum blainvillii*) on Appendix II of CITES. At the Sixth Conference of the Parties, a proposal was submitted to remove this taxa from Appendix II, but the proposal was withdrawn at the request of the United States. The Service's western region is conducting a status review of this subspecies. It has not been recorded in trade since its original listing, but this subspecies is threatened in the wild due to habitat destruction. It is protected under California State law, and it is illegal to take specimens from the wild. There are five recognized subspecies of horned lizards (*Phrynosoma coronatum* ssp.) occurring both in California and Mexico (Baja Peninsula). The United States may propose either to remove this subspecies from Appendix II or should the existing listing continue to be justified to list the other subspecies on Appendix II for look-alike reasons, thus removing the burden of identifying the subspecies by customs agents of importing countries.

The Animals Committee recommended that the Mexican bobcat (*Felis rufa escuinapae*) as a species be given further review due to difficulties in identification and questions as to its taxonomic validity. A similar technical problem previously existed for the different subspecies of margays and ocelots described from Central and South America until all the subspecies were listed in Appendix I of CITES under the specific headings. The United States was also to determine the volume of trade for *escuinapae*. The Mexican bobcat was proposed for listing in Appendix I at the Washington Conference (1973) and all the other subspecies of bobcats were added to the appendices with the inclusion of the family Felidae in Appendix II at the First Conference of the Parties (1977). Presently, all subspecies of bobcats, except *escuinapae*, are included in Appendix II in order to protect other listed felids due to similarity of appearance provision of paragraph 2(b) of Article II.

The number of subspecies of bobcats described to date comprise few realistically distinguishable taxa that have any real biological significance. Several subspecies of bobcats are recognized as existing in Mexico and their characters and ranges overlap with *escuinapae*. Besides the taxonomic problem, there is also little documented trade in the *escuinapae*. The United States intends to consult with the Mexican government, and will either propose downlisting *escuinapae* from Appendix I to II or propose listing the entire Mexican population of bobcats (*Felis* (=*Lynx*) *rufus* spp.) in Appendix I.

At the recent Animals Committee Meeting held in Australia (November 1990) it was recommended that the U.S. consider listing all pronghorn antelopes (*Antilocapra americana* ssp.) because of the difficulty in distinguishing between the listed subspecies (*A. a. mexicana*—App. II; *A. a. peninsularis* and *A. a. sonoriensis*—Appendix I) and the unlisted subspecies (*A. a. americana* and *A. a. oregona*). There is a possibility that the listed taxa might enter trade although there has been no documented evidence that they have been traded in the past. The United States may propose retaining only the Mexican populations of the presently listed subspecies. This would include almost all populations of the Appendix I species and the remaining populations are protected by its endangered listing status in the United States. This might address difficulties that importing countries have in distinguishing the various subspecies.

Possible Plant Proposals

In 1983, all six cactus species recognized in the latest revision of the genus *Turbinicarpus* were uplisted from Appendix II to Appendix I. Since then the genus has been revised including a revision which made it part of the genus *Neolloydia*, and other *Turbinicarpus* taxa have been described. The Service, in consultation with Mexico, will review the situation to determine whether a clarifying proposal is desirable.

In addition, the Plants Committee (chaired by the United States) agreed to review the listed plant taxa, especially in Appendix I, to determine whether there are any other listings that should be clarified, considering current taxonomic understanding. The Service would appreciate any comments on this issue.

Bred-in Captivity Proposals

Prior to the sixth meeting of the Conference of the Parties held in Ottawa, Canada, in July 1987, the Management Authority of the country of export was permitted, in accordance with paragraph 4 of Article VII, to designate specimens of Appendix I species as "bred in captivity" (as defined in resolution Conf. 2.12) for commercial purposes and to issue permits that allow Appendix I specimens so designated to be traded as Appendix II species under the terms of Article IV. Because of the concern that some specimens of species that were difficult to propagate could be improperly issued permits indicating that they were "bred in captivity," the Parties determined, in resolution Conf. 6.21, that before a Management Authority could designate species as "bred in captivity" the Parties must first accept that the species could be readily bred in captivity as specified in Conf. 2.12. Those species already registered with the CITES Secretariat as "bred in captivity," i.e. *Lutra, lutra, Branta sandvicensis, Anas laysanensis, Falco cherrug, Falco jugger, Falco peregrinus, Falco rusticolus, Lophura edwardsi, Tragopan caboti, Crocodylus niloticus* and *Crocodylus porosus*, do not need Party acceptance. Therefore, in accordance with Conf. 6.21, proposals documenting that the species is being bred in captivity in accordance with Conf. 2.12 must be submitted to and accepted by a two-thirds vote of the Parties before any Management Authority can register a facility as producing specimens as "bred in captivity," and thereby being entitled to export Appendix I specimens from such captive stocks under the terms of Article IV.

Conf. 7.10 provides format and criteria for proposals to register the first commercial captive-breeding operation for an Appendix I animal species. Any breeder who wishes to submit a proposal under provisions of Conf. 6.21 and Conf. 7.10 should request an annotated copy of Conf. 7.10 from the Office of Scientific Authority. (see ADDRESSES section)

Even after acceptance by the Parties that a species can be bred in captivity, the Management Authority in the country of export is still responsible for ensuring that each facility registered with the Secretariat meets the criteria of Conf. 2.12 for the species for which that facility is being registered. Certificates for specimens meeting "bred in captivity" criteria will continue to be issued for Appendix II species, and for Appendix I species when not bred for commercial purposes in accordance with paragraph 5 of Article VII. Therefore, proposals and acceptance by the Parties will be needed only if specimens of Appendix I species were regularly bred for commercial purposes. The Service proposes to consider applying the provisions of paragraph 4 of Article VII of CITES only to those operations engaged in the business of breeding Appendix I wildlife for commercial purposes, e.g., a private U.S. breeder engaged in the business of breeding live animals for sale to individuals or pet stores in other countries, or breeding animals to obtain hides to be exported for manufacture into leather goods.

Future Actions

The next regular meeting of the Parties is scheduled to be held March 2–13, 1992, in Kyoto, Japan. Any proposals to amend Appendix I or II by the next meeting must be submitted to the CITES Secretariat at least 150 days prior to the meeting (i.e., to be received by the Secretariat by October 4, 1991) and the Service plans to send any such proposals to the Secretariat in late September 1991.

The Service plans to publish a **Federal Register** notice in June 1991, to announce tentative species proposals to be submitted by the United States and to invite information and comments on them. Another notice in October 1991, will announce the Service's final decision on species proposals submitted by the United States to the CITES Secretariat. In future notices, the Service will also address the development of U.S. negotiating positions on proposals and issues submitted by other Party Nations to amend Appendix I or II.

Persons having information and comments on species that might be potential candidates for CITES proposals are urged to contact the Service's Office of Scientific Authority. Information for proposals should relate to the format for proposals mentioned above.

This notice was prepared by Dr. Richard M. Mitchell, Staff Zoologist, Office of Scientific Authority, under the authority of U.S. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.)

List of Subjects in 50 CFR Part 23

Engangered and threatened species, Exports, Imports, Treaties.

Dated: January 30, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91–2852 Filed 2–6–91; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 56, No. 26
Thursday, February 7, 1991

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

Agricultural Stabilization and Conservation Service

National Conservation Review Group; Meeting

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Notice of meeting.

SUMMARY: The National Conservation Review Group will meet to consider recommendations from State and County Conservation Review Groups with respect to the operational features of the Agricultural Conservation Program, the Emergency Conservation Program, and the Forestry Incentives Program. Comments and suggestions will be received from the public concerning these conservation and environmental programs administered by the Agricultural Stabilization and Conservation Service (ASCS).

DATES: Meeting Date: March 7, 1991.

ADDRESSES: Meeting Location: Room 5066 South Building, U.S. Department of Agriculture, 14th and Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Grady Bilberry, Chief, Conservation Programs and Automation Branch, Conservation and Environmental Protection Division, ASCS, U.S. Department of Agriculture, Room 4723, South Building, Washington, DC 20013, 202–447–7333.

SUPPLEMENTARY INFORMATION: The National Conservation Review Group meeting is scheduled to be held from 9 a.m. to 12:30 p.m. on March 7, 1991, in Room 5066 South Building, U.S. Department of Agriculture, Washington, DC. Meeting sessions will be open to the public. The agenda will include consideration of State and County Review Group recommendations for changes in the administrative procedures and policy guidelines of the ACP, ECP, and FIP. An opportunity will be provided for the public to present comments at the meeting on these conservation and environmental programs administered by ASCS. Because of time constraints and anticipated participation from interested individuals and groups, comments will be limited to not more than 5 minutes. Individuals and groups interested in making recommendations may also make them in writing and submit them to Chief, Conservation Programs and Automation Branch, Conservation and Environmental Protection Division, ASCS, U.S. Department of Agriculture, Room 4743–S, Washington, DC 20013. The meeting may also include discussion of current procedures, criteria, and guidelines relevant to the implementation of these programs.

Because of limited space available, persons desiring to attend the meeting should call Mr. Grady Bilberry, (202) 447–7333 to make reservations.

Signed at Washington, DC, on January 31, 1991.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 91–2977 Filed 2–6–91; 8:45 am]

BILLING CODE 3410–05–M

Forest Service

Implementation of management activities in the Van/Alder area, Flathead National Forest, Flathead County, MT

AGENCY: Forest Service, USDA.

ACTION: Rescission of notice of intent to prepare an environmental impact statement.

SUMMARY: On May 4, 1989, notice was published in the **Federal Register** [54 FR 19208] that an environmental impact statement would be prepared to assess the effects of timber harvest and road construction in the Van Lake/Alder Creek area of the Swan Valley located on the Swan Lake Ranger District, Flathead National Forest. That notice is hereby cancelled.

Following preliminary environmental analysis of the proposed Van/Alder Timber Sale, the Flathead National Forest has narrowed the scope of the proposed action. The proposed action no longer includes timber harvest or road construction in inventoried roadless lands. The current proposal does not include actions which normally require an Environmental Impact Statement. Pursuant to 40 CFR 1501.4 the Flathead National Forest plans to prepare an Environmenal Assessment of the proposed action. Based on this Assessment, the Forest will determine whether to prepare an Environmental Impact Statement.

FOR FURTHER INFORMATION CONTACT: Earl Sutton, District Planner, Swan Lake Ranger District, P.O. Box 370, Bigfork, Montana 59911 (Telephone (406) 837–5081).

Dated: January 28, 1991.

William L. Pederson,

District Ranger, Swan Lake Ranger District, Flathead National Forest.

[FR Doc. 91–2900 Filed 2–6–91; 8:45 am]

BILLING CODE 3410–11–M

Cabin Timber Sale, Wallowa-Whitman National Forest, Baker County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA, will prepare an environmental impact statement (EIS) for a timber sale and related activities. The EIS will tier to the final EIS and Land and Resource Management Plan (Forest Plan) for the Wallowa-Whitman National Forest.

The specific activities include: Harvest of timber from the area; transportation facilities; and other related activities.

The Forest Service proposal will be in compliance with the direction in the Forest Plan which provides the overall guidance for management of the area and the proposed project. The proposed Cabin timber sale would be implemented within the Elk Creek drainage in Fiscal Year 1992 on the Pine Ranger District. The Elk Creek drainage is located approximately 15 miles northeast of Halfway, Oregon. The proposed project area lies within the Little Eagle Meadows inventoried roadless area.

The Wallowa-Whitman National Forest invites written comments and suggestions on the scope of the analysis in addition to comments already

received as a result of local public participation activities in the past.

The agency also gives notice of the full environmental analysis and decision making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of this proposal must be received by March 8, 1991.

ADDRESSES: Submit written comments and suggestions concerning this analysis to Jon Vanderheyden, District Ranger, Pine Ranger District, General Delivery, Halfway, Oregon 97634.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Eric Twombly, telephone (503) 742–7511.

SUPPLEMENTARY INFORMATION CONTACT: The Forest Service proposal is listed in appendix C of the Forest Plan and includes the following description:

TIMBER SALE AND ASSOCIATED ROADS

Fiscal year	Sale name	Legal description	Acres	Net MMBF	Road miles
1992	Cabin	T6S, R46–47E	600	12.0	4.0

Abbreviations used above—T: Township; *R:* Range; *S:* South; *E:* East; *Desc:* Description; *MMBF:* Million Board Feet.

Other related activities: Recreation enhancement; fuels reduction; and wildlife habitat enhancement.

This EIS will tier to the final EIS and Forest Plan. The Forest Plan provides goals and objectives, Forest-wide standards and guidelines, management area standards and guidelines, and management area prescriptions for the various lands on the Forest. This direction provides for management practices that will be utilized during the implementation of the Forest Plan.

The Cabin area contains about 2000 acreas. The entire area is in Management Area 3A which emphasize the maintenance of the wildlife habitat.

The analysis will consider a range of alternatives Along with the proposed action, the analysis will consider a no action alternative in the Cabin area.

Public participation will be especially important at several points during the analysis, beginning with the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies and other individuals or organizations who may be interested in or affected by the proposed project. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying major issues to be analyzed in depth.
3. Identifying issues which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives based on themes which will be derived from issues recognized during scoping activities.
5. Identifying potential environmental effects of this project and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.
7. Notifying interested publics of opportunities to participate through meetings, personal contacts, or written comment. Keeping the public informed through the media and/or written material (i.e., newsletters, correspondence, etc.).

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by July, 1991. EPA will publish a notice of availability of the draft EIS in the **Federal Register.** Comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register.** At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. It is very important that those interested in the management of the Wallowa-Whitman National Forest participate at that time.

The Forest Service believes it is important to give reviewers notice of this early stage of public participation and of several court rulings related to public participation in the environmental review process.

First, a reviewer of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel,* 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed (see Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

The final EIS is scheduled to be completed by November, 1991. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding the proposal. Bob Richmond, Forest Supervisor, Wallowa-Whitman National Forest, P.O. Box 907, Baker City, Oregon 97814, is the Responsible Official. As the Responsible Official he will decide whether to implement the proposal or a different alternative. The Responsible Official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR Part 217).

Dated: January 29, 1991.

R.M. Richmond,

Forest Supervisor.

[FR Doc. 91–2880 Filed 2–6–91; 8:45 am]

BILLING CODE 3410–11–M

CIVIL RIGHTS COMMISSION

California Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the California Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 1 p.m. on February 23, 1991, at the Holiday Inn, Capitol Plaza, 300 "J" Street, Sacramento, California 95814. The purpose of the meeting is to discuss the state university system project, the border violence project and follow-up to the Santa Maria forum.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Michael C. Carney or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 30, 1991.

Wilfredo J. Gonzalez,

Staff Director.

[FR Doc. 91–2855 Filed 2–6–91; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Electronic Instrumentation Technical Advisory Committee; Closed Meeting

A meeting of the Electronic Instrumentation Technical Advisory Committee will be held March 6 and 7, 1991, 9 a.m., in the Herbert C. Hoover Building, room 1629, 14th Street and Pennsylvania Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to electronics and related equipment and technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

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., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 377–2583.

Dated: February 4, 1991.

Betty Anne Ferrell,

Director, Technical Advisory Unit.

[FR Doc. 91–2982 Filed 2–6–91; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A–122–047]

Elemental Sulphur From Canada: Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke In Part

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce ("the Department") is conducting an administrative review of the antidumping finding on elemental sulphur from Canada. This review covers two producers and/or exporters of elemental sulphur to the United States during the period December 1, 1988, through November 30, 1989. This review indicates no dumping margin for either firm during the review period. In addition, we intend to revoke the finding with respect to Petro-Canada.

We invite interested parties to comment on these preliminary results. If this review proceeds as expected, we will issue final results on or before April 12, 1991.

EFFECTIVE DATE: February 7, 1991.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Hager or Carole A. Showers, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–5055 and 377–3217, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On October 26, 1990, the Department published in the **Federal Register** (55 FR 43152) the final results of its last administrative review of the antidumping finding on elemental sulphur from Canada (38 FR 35655, December 17, 1973) covering the period December 1, 1987, through November 30, 1988.

On December 29, 1989, both Sulco Chemical Ltd. ("Sulco") and Petro-Canada Resources ("Petro-Canada") requested that the Department conduct an administrative review for the period December 1, 1988, through November 30, 1989, in accordance with 19 CFR 353.22(a). We published a notice of initiation of this antidumping duty administrative review for both companies on February 16, 1990 (55 FR 5640).

On March 7, 1990, we issued questionnaires to Petro-Canada and Sulco. Questionnaire responses were received from Petro-Canada and Sulco on May 4 and 14, 1990, respectively.

In November 6, 1990, the Department sent deficiency/supplemental questionnaires to Petro-Canada and Sulco. The deficiency/supplemental responses from both Petro-Canada and Sulco were received on December 5, 1990.

The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act")

Scope of Review

Imports covered by this review are shipments of elemental sulphur from Canada. During the review period, elemental sulphur was classifiable under item 415.4500 to the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classifiable under *Harmonized Tariff Schedule* (HTS) item 2501.01.00. The TSUSA and HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Review Period

The review period is December 1, 1988, through November 30, 1989.

United States Price

For both Sulco and Petro-Canada, we based the United States price on purchase price, in accordance with section 772(b) of the Act, because all sales used for purposes of our analysis

were made directly to unrelated parties prior to importation into the United States.

Petro-Canada

We calculated purchase price based on f.o.b. refinery price to unrelated purchasers in the United States. No adjustments were made.

Sulco

We calculated purchase price based on either f.o.b. refinery prices with freight charged or f.o.b. delivered prices with freight included in the price. We made deductions, where appropriate, for inland freight, foreign brokerage and handling and demurrage.

Foreign Market Value

In calculating foreign market value, the Department used home market price as defined in section 773 of the Act.

Petro-Canada

Home market prices were based on f.o.b. refinery prices to unrelated purchasers in the home market. We made adjustments, where appropriate, for differences in credit in accordance with 19 CFR 353.56.

Petro-Canada reported certain sales made to a broker as sales to the United States. Based on the statements provided by Petro-Canada, we have no reason to believe that it knew the final destination of these sales was, in fact, the United States. Therefore, we have reclassified these sales as home market sales.

Sulco

We calculated home market price on either f.o.b. refinery prices with freight charged or f.o.b. delivered prices with freight included in the price. We made deductions, where appropriate, for inland freight and demurrage. We made adjustments, where appropriate, for differences in credit in accordance with 19 CFR 353.56.

Preliminary Results of the Review and Intent to Revoke in Part

As a result of our review, we preliminarily determine that the following margins exist for the period December 1, 1988, through November 30, 1989:

Manufacturer/exporter	Margin (percent)
Petro-Canada	0.00
Sulco	0.00

Petro-Canada has had sales at not less than fair value for at least three consecutive years. In addition, as provided in 19 CFR 353.25(a)(2)(iii), Petro-Canada has agreed in writing to an immediate suspension of liquidation and reinstatement of the finding if circumstances develop which indicate that Canadian elemental sulphur exported to the United States by Petro-Canada is being sold at less than fair value. Therefore, we intend to revoke the antidumping finding on Canadian elemental sulphur with respect to Petro-Canada. If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise produced by Petro-Canada and exported to the United States entered, withdrawn from warehouse, for consumption, on or after December 1, 1989.

The Department will issue appraisement instructions concerning Petro-Canada and Sulco directly to the Customs Service upon completion of this administrative review.

Furthermore, the following deposit requirements will be effective upon publication of our final results of this administrative review for all shipments of the subject merchandise from Canada entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for any shipments of this merchandise manufactured or exported by the remaining known manufacturers/exporters not covered in this review will continue to be at the rate published in the final results of the last recent administrative review for those firms; (2) the cash deposit rate for Petro-Canada and Sulco, if any, will be that established in the final results of this administrative review; and (3) the cash deposit rate for any future entries of this merchandise from a new producer and/or exporter, not covered in this or any previous administrative review, whose first shipments occurred after November 30, 1989, and which is unrelated to any previously reviewed firm will be 0.00 percent. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

In accordance with 19 CFR 353.38, we will hold a public hearing, if requested, on March 22, 1991, at 2 p.m. in room 3708 to afford interested parties an opportunity to comment on these preliminary results. Interested parties who wish to request a hearing must submit a written request within ten days of the date of publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

In addition, ten copies of the business proprietary version and five copies of the non-proprietary version of case briefs must be submitted to the Assistant Secretary no later than March 8, 1991. Ten copies of the business proprietary version and five copies of the non-proprietary version of rebuttal briefs must be submitted to the Assistant Secretary no later than March 15, 1991. At the hearing, an interested party may make a presentation only on arguments included in that party's briefs. If no hearing is requested, interested parties still may comment on these preliminary results in the form of case and rebuttal briefs. Written argument should be submitted in accordance with 19 CFR 353.38 and will be considered if received within the time limits specified in this notice.

This administrative review, notice, and intent to revoke in part are in accordance with section 751(a)(1) of the Act, 19 CFR 353.22(c)(5), and 19 CFR 353.25.

Dated: January 31, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-2983 filed 2-6-91; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 91-001. *Applicant:* University of California, San Diego, La Jolla, CA 92093. *Instrument:* Rotating Anode X-Ray Generator, Model RU-200H. *Manufacturer:* Rigaku

Corporation, Japan. *Intended Use:* The instrument will be used in a high speed data collection system for protein crystallography to collect data to find the three-dimensional structure of proteins or enzymes using x-ray diffraction methods. *Application Received by Commissioner of Customs:* January 8, 1991.

Docket Number: 91–002. *Applicant:* Williams College, Bronfman Science Center, Williamstown, MA 01267. *Instrument:* Electron Microscope with Accessories, Model CM10/PC. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used to examine nervous tissue from vertebrate animals, various plant cells, bacteria, and viruses in basic research projects. Biomedical research objectives will include: (1) Synapse formation of regenerating nervous tissue, (2) plant cell ultrastructural changes in response to stress, and (3) ultrastructural comparisons of muscle fibers from a variety of animals. In addition, the instrument will be used for demonstration and training undergraduate students in the theory and practice of electron microscopy as applied to Biology. *Application Received by Commissioner of Customs:* January 9, 1991.

Docket Number: 91–003. *Applicant:* Indiana University—Purdue University at Indianapolis, 620 Union Drive, Indianapolis, IN 46202. *Instrument:* Stopped-Flow Spectrofluorimeter, Model SF–51 with SHU–51 Sample Handling Unit. *Manufacturer:* Hi Tech, United Kingdom. *Intended Use:* The instrument will be used for the study of human alcohol dehydrogenases and for educational purposes in the courses "Enzyme" and "Instrumentation." *Application Received by* Commissioner of Customs: January 9, 1991.

Docket Number: 91–004. *Applicant:* Xavier University of Louisiana, 7325 Palmetto Street, New Orleans, LA 70125. *Instrument:* Organ Bath and Accessories, *Manufacturer:* Hugo Sachs Elektronik, West Germany. *Intended Use:* The instrument will be used in experiments to determine the effects of electrical stimuli and pharmacological agents on isolated preparations of smooth and cardiac muscles from rats, mice, guinea-pig and rabbits. *Application Received by Commissioner of Customs:* January 10, 1991.

Docket Number: 91–005. *Applicant:* Oregon State University, Department of Engineering, Corvallis, OR 97331–2302. *Instrument:* Asphalt Concrete Pavement Tester with Accessories. *Manufacturer:* MAP, France. *Intended Use:* The instrument will be used to investigate whether asphaltic concrete pavement materials consisting of a variety of asphalts and aggregates have a propensity for rutting (permanent deformation due to traffic loading and other environmental factors such as moisture, asphalt embrittlement, freezing and thawing, etc.). Various combination of asphalt-aggregate mixtures will be tested in the instrument in the absence and in the presence of water at two temperatures and two air void levels (densities). *Application Received by Commissioner of Customs:* January 10, 1991.

Docket Number: 91–006. *Applicant:* National Institute of Standards and Technology, Gaithersburg, MD 20899. *Instrument:* Excimer Multigas Laser, Model LPX 205i. *Manufacturer:* Lambda Physik, GmbH, West Germany, *Intended Use:* The instrument will be used to generate vacuum ultraviolet light for the study of the chemistry, kinetics, and dynamics of carbon monoxide, metal carbonyl and other prototype molecules at surfaces. The studies will ascertain the rates and pathways of relaxation, including chemical processes, following a variety of surface excitations. *Application Received by Commissioner of Customs:* January 11, 1991.

Docket Number: 91–007. *Applicant:* Rutgers, the State University of New Jersey, Department of Biomedical Engineering, P.O. Box 909, Piscataway, NJ 08855–0909. *Instrument:* Iris IR Eye-Tracker System, Model 6500. *Manufacturer:* Skalar Medical, The Netherlands. *Intended Use:* The instrument will be used to monitor the movement of the two eyes simultaneously to determine strategies used by the brain to control human motor activity. *Application Received by Commissioner of Customs:* January 11, 1991.

Docket Number: 91–008. *Applicant:* Mississippi State University, Electron Microscope Center, P.O. Drawer EM, MSU, Mississippi State, MS 39762. *Instrument:* Electron Microscope, Model JEM–100CXII. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used by faculty and graduate students to carry out high resolution research in the following disciplines:

1. Entomology—ultrastructure of the insect nervous system, pheromone glands and pathological changes induced by bacteria and viruses in the digestive system.

2. Plant Pathology and Weed Science—ultrastructural study of plant diseases.

3. Biological Science—ultrastructural work on chromosomes.

4. Poultry Science—ultrastructural work on chicken muscle and various changes that occur in poultry due to viral and bacterial diseases.

5. Veterinary School—diagnostic, clinical and research projects that deal with pathogen, nutritional or drug induced changes in small and large animals.

The instrument will also be used in training graduate students who are M.S. and Ph.D. candidates in many different departments. *Application Received by Commissioner of Customs:* January 11, 1991.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91–2984 Filed 2–6–91; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Business Development Center Applications: State of Alaska

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $184,260 in Federal funds and a minimum of $32,516 in non-Federal contributions for the budget period July 1, 1991 to June 30, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the State of Alaska Geographic Service Area.

The I.D. number for this project will be 10–10–91008–01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of

information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: (Selection Process/ Procedures as required by DAO 203–26, Grants Administration) the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purposes of the MBDC program. The application will then be forwarded to the Department for final processing and approval if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50.00 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATES: The closing date for applications is March 18, 1991. Applications must be postmarked on or before March 18, 1991.

Proposals will be reviewed by the Atlanta Regional Office. The mailing address for submission is: Atlanta Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 401 West Peachtree Street NW., suite 1930, Atlanta, Georgia 30308–3516, 404/730–3300.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105. February 28, 1991 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Xavier Mena, Regional Director, San Francisco Regional Office at 415/744–3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department are made to pay the debt.

Section 319 of Public Law 101–121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants Loans, and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and, procedures applicable to Federal assistance awards.

A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Funding Authority for MBDA Awards: Executive Order 11625.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: February 1, 1991.

Xavier Mena,

Regional Director, San Francisco Regional Office.

[FR Doc. 91–2882 Filed 2–6–91; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications: Fresno, CA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $184,260 in Federal funds and a minimum of $32,516 in non-Federal contributions for the budget period July 1, 1991 to June 30, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Fresno, California Geographic Service Area.

The I.D. number for this project will be 09–10–91009–01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: (Selection Process/ Procedures as required by DAO 203–26, Grants Administration) the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach

(techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purposes of the MBDC program. The application will then be forwarded to the Department for final processing and approval if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50.00 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATES: The closing date for applications is March 18, 1991. Applications must be postmarked on or before March 18, 1991.

Proposals will be reviewed by the Atlanta Regional Office. The mailing address for submission is: Atlanta Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 401 West Peachtree Street NW., suite 1930, Atlanta, Georgia 30308–3516, 404/730–330.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105. February 28, 1991 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Xavier Mena, Regional Director, San Francisco Regional Office at 415/744–3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department are made to pay the debt.

Section 319 of Public Law 101–121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants Loans, and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and, procedures applicable to Federal assistance awards.

A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Funding Authority for MBDA Awards: Executive Order 11625.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: February 1, 1991.

Xavier Mena,

Regional Director, San Francisco Regional Office.

[FR Doc. 91–2883 Filed 2–6–91; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications: Los Angeles, CA

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $622,000 in Federal funds and a minimum of $109,765 in non-Federal contributions for the budget period July 1, 1991 to June 30, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Los Angeles, California Geographic Service Area.

The I.D. number for this project will be 09–10–91007–01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses.To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: (Selection Process/ Procedures as requested by DAO 203–26, Grants Administration) the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purposes of the MBDC program. The application will then be forwarded to the Department for final processing and approval if appropriate. The Director

will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50.00 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is March 18, 1991. Applications must be postmarked on or before March 18, 1991.

Proposals will be reviewed by the Atlanta Regional Office. The mailing address for submission is: Atlanta Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 401 West Peachtree Street NW., suite 1930, Atlanta, Georgia 30308–3516, 404/730–3300.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105. February 28, 1991 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Xavier Mena, Regional Director, San Francisco Regional Office at 415/744–3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department are made to pay the debt.

Section 319 of Public Law 101–121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants Loans, and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and, procedures applicable to Federal assistance awards.

A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Funding Authority for MBDA Awards: Executive Order 11625.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: February 1, 1991.

Xavier Mena,

Regional Director, San Francisco Regional Office.

[FR Doc. 91–2884 Filed 2–6–91; 8:45 am]

BILLING CODE 3510–21–M

DEPARMTENT OF COMMERCE

Business Development Center Applications: Oxnard, CA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period July 1, 1991 to June 30, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Oxnard, California Geographic Service Area.

The I.D. number for this project will be 09–10–91012–01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: (Selection Process/ Procedures as required by DAO 203–26, Grants Administration) the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points; the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purposes of the MBDC program. The application will then be forwarded to the Department for final processing and approval if appropriate. The Director will consider past performance of the applicant on previous Federal funds.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50.00 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date

quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is March 18, 1991. Applications must be postmarked on or before March 18, 1991.

Proposals will be reviewed by the Atlanta Regional Office. The mailing address for submission is: Atlanta Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 401 West Peachtree Street NW., suite 1930, Atlanta, Georgia 30308–3516, 404/730–3300.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105. February 28, 1991 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Xavier Mena, Regional Director, San Francisco Regional Office at 415/744–3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department are made to pay the debt.

Section 319 of Public Law 101–121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants Loans, and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Funding Authority for MBDA Awards: Executive Order 11625.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: February 1, 1991.

Xavier Mena,

Regional Director, San Francisco Regional Office.

[FR Doc. 91–2685 Filed 2–6–91; 8:45 am]

BILLING CODE 3510–21–M

DEPARTMENT OF COMMERCE

Business Development Center Applications: Stockton, CA

AGENCY: Minority Business Development Agency, CA.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period July 1, 1991 to June 30, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Stockton, California Geographic Service Area.

The I.D. number for this project will be 09–10–91014–01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: (Selection Process/ Procedures as required by DAO 203–26, Grants Administration) the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purposes of the MBDC program. The application will then be forwarded to the Department for final processing and approval if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50.00 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is March 18, 1991. Applications must be postmarked on or before March 18, 1991.

Proposals will be reviewed by the Atlanta Regional Office. The mailing address for submission is: Atlanta Regional Office, Minority Business Development Agency, U.S. Department

of Commerce, 401 West Peachtree Street NW., suite 1930, Atlanta, Georgia 30308–3516, 404/730–3300.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105. February 28, 1991 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Xavier Mena, Regional Director, San Francisco Regional Office at 415/744–3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department are made to pay the debt.

Section 319 of Public Law 101–121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants Loans, and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and, procedures applicable to Federal assistance awards.

A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Funding Authority for MBDA Awards: Executive Order 11625.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: February 1, 1991.

Xavier Mena,

Regional Director, San Francisco Regional Office.

[FR Doc. 91–2686 Filed 2–6–91; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications: Honolulu, HI

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $414,500 in Federal funds and a minimum of $73,147 in non-Federal contributions for the budget period July 1, 1991 to June 30, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Honolulu, Hawaii Geographic Service Area.

The I.D. number for this project will be 09–10–91010–01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: (Selection Process/ Procedures as required by DAO 203–26, Grants Administration) the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purposes of the MBDC program. The application will then be forwarded to the Department for final processing and approval if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50.00 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is March 18, 1991. Applications must be postmarked on or before March 18, 1991.

Proposals will be reviewed by the Atlanta Regional Office. The mailing address for submission is: Atlanta Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 401 West Peachtree Street NW., suite 1930, Atlanta, Georgia 30308–3516, 404/730–3300.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105. February 28, 1991 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Xavier Mena, Regional Director San Francisco Regional Office at 415/744–3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department are made to pay the debt.

Section 319 of Public Law 101–121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants Loans, and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and, procedures applicable to Federal assistance awards.

A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Funding authority for MBDA Awards: Executive Order 11625.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: February 1, 1991.

Xavier Mena,

Regional Director, San Francisco Regional Office.

[FR Doc. 91–2687 Filed 2–6–91; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications: Las Vegas, NV

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period July 1, 1991 to June 30, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Las Vegas, Nevada Geographic Service Area.

The I.D. number for this project will be 09–10–91011–01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: (Selection Process/ Procedures as required by DAO 203–26, Grants Administration) the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purposes of the MBDC program. The application will then be forwarded to the Department for final processing and approval if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50.00 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is March 18, 1991. Applications must be postmarked on or before March 18, 1991.

Proposals will be reviewed by the Atlanta Regional Office. The mailing address for submission is: Atlanta Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 401 West Peachtree Street NW., suite 1930, Atlanta, Georgia 30308–3516, 404/730–3300.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, February 28, 1991 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Xavier Mena, Regional Director, San Francisco Regional Office at 415/744–3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department are made to pay the debt.

Section 319 of Public Law 101–121 generally prohibits recipients of Federal contracts, grants, and loans from using

appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants, Loans, and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Funding Authority for MBDA Awards: Executive Order 11625.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: February 1, 1991.

Xavier Mena,

Regional Director, San Francisco Regional Office.

[FR Doc. 91–2888 Filed 2–6–91; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications: Portland, OR

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period July 1, 1991 to June 30, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Portland, Oregon Geographic Service Area.

The I.D. number for this project will be 10–10–91013–01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority indiviuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: (Selection Process/ Procedures as required by DAO 203–26, Grants Administration) the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purposes of the MBDC program. The application will then be forwarded to the Department for final processing and approval if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50.00 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations wil be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is March 18, 1991. Applications must be postmarked on or before March 18, 1991.

Proposals will be reviewed by the Atlanta Regional Office. The mailing address for submission is: Atlanta Regional Office, Minority Business Development Agency, N.S. Department of Commerce, 401 West Peachtree Street NW., suite 1930, Atlanta, Georgia 30308–3516, 404/730–3300.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105. February 28, 1991 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Xavier Mena, Regional Director, San Francisco Regional Office at 415/744–3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" in not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts has been paid or arrangements satisfactory to the Department are made to pay the debt.

Section 319 of Public Law 101–121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants Loans, and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal and Departmental

regulations, policies, and, procedures applicable to Federal assistance awards.

A false statement on the application may be ground for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Funding Authority for MBDA Awards: Executive Order 11625.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: February 1, 1991.

Xavier Mena,

Regional Director, San Francisco Regional Office.

[FR Doc. 91-2889 Filed 2-6-91; 8:45 am]

BILLING CODE 3510-21-M

National Institute of Standards and Technology

[Docket No. 901109-0309]

Grant Funds—Materials Science and Engineering

AGENCY: National Institutes of Standards and Technology, Commerce.

ACTION: Announcing Availability of Grant Funds—Materials Science and Engineering.

SUMMARY: The purpose of this notice is to inform potential applicants that the Materials Science and Engineering Laboratory, National Institute of Standards and Technology, is continuing its Research Grants Program to eligible academic institutions, nonfederal agencies, and independent and industrial laboratories. Applications are now being accepted for grants in the areas of Ceramics, Metallurgy, Polymer Sciences, Reactor Radiation Physics and Spectroscopy. (Catalog of Federal Domestic Assistance No. 11.609 "Measurement and Engineering Research Standards"). Applicants must submit one signed original and two copies of their proposal along with a Grant Application, Standard Form 424 (REV. 4/88) as referenced under the provisions of OMB Circulars A-110 and A-102.

SUPPLEMENTARY INFORMATION: As authorized by section 2 of the Act of March 3, 1901, as amended (15 U.S.C. 272), the National Institute of Standards and Technology, Materials Science and Engineering Laboratory, conducts directly and through grants and cooperative agreements, a basic and applied research program supported by the National Institute of Standards and Technology, for approximately $500,000 and other agency awards, subject to availability of funds. The Materials Science and Engineering Laboratory Grants Program is limited to innovative ideas which are generated by the proposal writer on what research to carry out and how to carry it out. Proposals will be considered for research projects from one to three years. When a proposal for a multi-year grant is approved, funding will be provided for only the first year of the program. Funding for the remaining years of the program is contingent upon satisfactory performance and subject to the availability of funds, but no liability shall be assumed by the government because of non-renewal or non-extension of a grant. All grant proposals submitted must be in accordance with the program objectives listed below. For clarity of the program objectives, you may contact the individuals listed in each area.

Program Objectives

I. Office of Nondestructive Evaluation, 401—The primary objective is to measure the far infrared (FIR) and mid-infrared continuum absorption of primarily nonpolar gases and liquids found in the atmospheres of the outer planets, in particular, gaseous and liquid CH4, and gaseous mixtures of N2 and CH4, and to analyze these data.

Contact: G. Birnbaum (301) 975-5727, National Institute of Standards and Technology, Materials Building, room B344, Gaithersburg, Maryland 20899.

II. Ceramics Division, 420—Grants and contracts to supplement division activities in the area of ceramic processing and sample preparation, tribology, composites, machining, interfacial chemistry, and microstructural analysis.

Contact: Dr. Steve Hsu (301) 975-6119, National Institute of Standards and Technology, Materials Building, room A256, Gaithersburg, Maryland 20899.

III. Polymers Division, 440—Occasionally contracts for synthesis of polymers for research purposes, and collaborative research efforts in which the contractor provides mechanical, electrical, optical, transport, or structure data on polymeric materials.

Contact: B. Fanconi (301) 975-6770, National Institute of Standards and Technology, Polymers Building, room A309, Gaithersburg, Maryland 20899.

IV. Metallurgy Division, 450—Develop techniques to predict, measure and control transformations, phases, microstructures and kinetic processes in metals and their alloys.

Contact: J. Manning (301) 975-6157, National Institute of Standards and Technology, Materials Building, room A153, Gaithersburg, Maryland 20899.

V. Metallurgy Division, 450—Develop new and improved sensors for nondestructive evaluation and processes, and process models for intelligent processing of materials.

Contact: H. T. Yolken (301) 975-6140, National Institute of Standards and Technology, Materials Building, room A163, Advanced Sensing Section, Gaithersburg, Maryland 20899.

VI. Reactor Radiation Division, 460—Develop cold neutron research approaches and related physics and materials applications.

Contact: J. Rush (301) 975-6220, National Insitute of Standards and Technology, Reactor Building, room A106, Gaithersburg, Maryland 20899.

Proposal Review Process

Proposals should be submitted to the appropriate contact person of the programs listed above for reivew, including external peer review, when appropriate and recommendations on funding. Both technical value of the proposal and the relationship of the work proposed to the needs of the specific program are taken into consideration. Applicants should allow up to 120 days processing time. Proposals are evaluated for technical merit by three professionals from the Materials Science and Engineering Laboratory.

Selection Criteria

The criteria to be used in evaluating the proposals include: Rationality, (coherence of approach, relation to scientific/technical issues), Qualification of Technical personnel, Resources Availability, and Technical Merit of Contribution. Each of these factors will be given equal weight in the selection process.

Paperwork Reduction Act

The Standard Form 424 mentioned in this notice is subject to the requirements of the Paperwork Reduction Act and it has been approved by OMB under Control No. 0348-0006.

Additional Requirements

All applicants must submit a certification ensuring that employees of the applicant are prohibited from engaging in the unlawful manufacturing, distribution, dispensing, possession or use of a controlled substance at the work site, as required by the regulations implementing the Drug-Free Workplace Act of 1988, 15 CFR part 26, subpart F. Applicants are subject to the Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

Section 319 of Public Law 101-121 generally prohibits recipients of federal

contracts, grants, and loans from using appropriated funds for lobbying the Executive or legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants, Loans, and Cooperative Agreements" and the SF-LLL, "Disclosure of Lobbying Activities" (if applicable), is required to be submitted with any application.

Applicants are remined that a false statement may be grounds for denial, or termination of funds and grounds for possible punishment by fine or imprisonment. Any recipient/applicant who has an outstanding indebtedness to the Department of Commerce, will not receive a new award until the debt is paid or arrangements satisfactory to the Department are made to pay the debt.

Awards under the Materials Science and Engineering Laboratory Research Program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

The Materials Science and Engineering Grants Program does not direclty affect any state or local government. Accordingly, NIST has determined that Executive Order 12372 is not applicable to the Materials Science and Engineering Grants Program.

Dated: January 31, 1991.

John Lyons,

Director.

[FR Doc. 91-2928 Filed 2-6-91; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Serivce (NMFS), NOAA, Commerce.

ACTION: Notice of application for experimental fishing permit.

SUMMARY: Notice is hereby given that an applicant has applied for a permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (MMPA) and the Regulations Governing the Taking and Importing of Marine Mammals. The public is invited to review the application and provide comments.

DATES: Comments are invited and must be received no later than March 11, 1991.

ADDRESSES: Comments may be mailed to, and documents submitted with the above application are available for review at, the following addresses: Director, Southwest Region, National Marine Fisheries Services, NOAA, 300 South Ferry Street, Terminal Island, CA 90731-7415; and, Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: E.C. Fullerton, Regional Director, Southwest Region, National Marine Fisheries Service, (213) 514-6196.

SUPPLEMENTARY INFORMATION: For unknown reasons, yellowfin tuna tend to congregate beneath schools of dolphin in the eastern tropical Pacific Ocean (ETP). Tuna fishermen have long recognized this relationship and use the dolphins to locate the tuna. Large purse seine nets are set around the dolphins, capturing the tuna and dolphins together. Methods are employed to release the dophins prior to bringing the tuna onboard. In the process of release, dophins may become entrapped and entangled in the net and die.

The 1988 amendments to the MMPA require the establishment of a system to provide vessel owners and operators an opportunity to experiment with new equipment and procedures for the purpose of reducing mammal mortality and the serious injury rate. In experimental fishing operations under a permit, the Secretary may waive or modify restrictions that would otherwise apply under the marine mammal regulations or the terms and conditions of the American Tunaboat Association General Permit. The Secretary of Commerce may not waive marine mammal quotas or the prohibition against setting nets around pure schools of certain marine mammals.

The NMFS Southwest Regional Office (NMFS/SWR) received an applicaiton on November 26, 1990, from Roland L. Virissimo, president of Hornet Corporation, for an experimental fishing permit pursuant to section 104(h)92)(B)(v) of the MMPA, and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR 216.24(d)(2)(viii)), to test the use of killer whale sounds to separate dolphins from the tuna schools below them prior to net encirclement as a method of reducing dolphin mortalities in the ETP tuna purse seining operations.

A combined total of ten purse seine sets over a 60-day period are planned on offshore spotted dolphins (*Stenella attenuata*) and eastern spinner dolphins (*S. longirostris*) in the ETP. Fifteen hundred spotted dolphins and 500 spinner dolphins is the estimated maximum composition of marine mammals for any given set. Take will be by harassment for the purpose of separating the dolphins from the tuna that travel with them. Dolphin herds will be approached with the seiner and helicopter as in normal fishing operations. Prior to net deployment, a buoy containing acoustic equipment will be lowered from the helicopter into the dolphin herd, and underwater projections of killer whale (*Orcinus orca*) or false killer whale (*Pseudorca crassidens*) sounds will be played to elicit escape behavior in the dolphins. The acoustic bouy could serve as an aggregating device for the tuna school. Deployment of other artificial aggregators, such as the Zinbe decoy (an artificial whale shark), may be attempted in an effort to hold the tuna schools together so that they can be encricrled with the purse seine after the dolphins have dispersed.

Data on the experiment will be collected by the NMFS observer onboard, and will be analyzed by NMFS/SWR staff.

All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of NMFS.

Dated: February 1, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-2921 Filed 2-6-91; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of co-exclusive licenses in the United States and certain foreign countries to practice the invention embodied in U.S Patent Application Serial Number 7-048,148 filed May 11, 1987 entitled, "Small Peptides Which Inhibit Binding to T4 Receptors and Act as Immunogens" to Integra Institute, Inc. and to Reed MacFadden (U.S.), Inc.

The prospective co-exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusive licenses may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35

U.S.C. 209 and 37 CFR 404.7. The licenses will be restricted to the therapeutic treatment of HIV infections.

The invention relates to synthetically produced short peptide sequences which inhibit HTLV-III/LAV (hereinafter referred to as HIV) binding to human cells by blocking receptor sites on the cell surface, and thus preventing viral infectivity of human T cells. The peptides, while preventing infectivity, also induce antibody production against the envelop protein of the HIV virus. Hence, these peptides also may have use as vaccines to prevent development of Acquired Immune Deficiency Syndrome (AIDS). Monoclonal antibodies to the peptides could also be used as diagnostic agents to identify the HIV virus. Hence, peptides and antibodies to the peptides would have use in preparing kits for identification of HIV carriers or persons suffering from AIDS.

The National Institute of Mental Health presently is conducting and supporting Phase I and Phase II clinical trials of this invention in the United States. The coexclusive license agreements will contain concrete diligence terms, including required support for the ongoing phase I clinical trials. Diligence terms also will require the licensees to conduct and support Phase II and Phase III trials of their own in the U.S., and to progress toward registration and commercial availability in the U.S. The licenses will be coexclusive in the U.S. In other territories, the licenses will be exclusive to one or the other company based upon the achievement of specific diligence benchmarks. This is intended to provide incentive to the coexclusive licensees to develop smaller, non-U.S. markets that require separate regulatory approval and significant additional investment.

The availability of the invention for licensing was published in the Federal Register Vol. 55, No. 103, p. 21769 (1990). A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 703/487-4650 or by writing to Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Papan Devnani, Center for Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Patent Licensing Specialist, Center for Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 91-2902 Filed 2-6-91; 8:45 am]

BILLING CODE 3510-04-M

Prospective Grant of Exclusive Patent License

This notice is in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent No. 4,553,533 (Serial Number 6-550,040), "Intra-Urethral Prosthetic Sphincter Valve" and its continuation-in-part, Serial Number 7-530,585, "Intra-Urethral Valve with Integral Spring" to UroMed Corporation, having a place of business in Boston, MA. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixth days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The patent invention is a prosthetic urethral sphincter valve that is placed totally within the patient's urethra, the valve including a collapsible flexible thin-walled annular bag member secured in a rigid casing with flexible retaining petals at its top end receivable in the patient's bladder. An upstanding annual flexible thin-walled diaphragm is provided over an inturned top flange on the casing, the flange having small flow apertures forming damping ports communicating within the flexible bag member. The bottom end of the bag member is engaged with an annular guide urged upwardly by a coiled spring bearing on an inturned bottom flange of the casing. The working space between the bag member and the diaphragm is filled with viscous grease. The bag member has a central tubular passage which is normally occluded or kinked by the upward biasing force of the coiled spring. When the patient exerts sustained bladder pressure, the flexible bag member is distended downwardly, causing the central tubular passage to elongate and thereby open up, enabling it to pass urine. After urination, the bladder pressure is released, allowing the spring to return the bag member to its collapsed state and restore the occlusion of its central tubular passage, providing positive shut-off of the valve.

Its continuation-in-part is a prosthetic urethral sphincter valve with an integral spring valve member which comprises an elastic valve fluid passage and a lower diaphragm portion which includes a rolling diaphragm. The prosthetic urethral sphincter valve is placed totally within a patient's urethra. The lower diaphragm portion of the elastic valve element includes a tapered wall structure which provides for a spring action which demonstrates a non-linear force curve. The central fluid passage assumes a kinked or closed position, or a straighten or open position depending upon the position of the rolling diaphragm. Applied bladder pressure effects the position of the rolling diaphragm and thus the opening and closing of the central fluid passage.

A copy of the parent patent may be purchased for $1.50 from the Commissioner of Patents, United States Patent and Trademark Office, Box 9, Washington, DC 20231.

The availability for licensing of the parent invention was published in the Federal Register, Vol. 49, #49, p. 9250 (March 12, 1984). The availability of its continuation-in-part for licensing is announced herein.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 1-800-336-4700 (703/487-4650) or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark Center for Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Center for Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 91-2903 Filed 2-6-91; 8:45 am]

BILLING CODE 3510-04-M

COMMODITY FUTURES TRADING COMMISSION

Proposed Commission Order Concerning Issuance and Sale by Uruguay and Subsequent Resale by the Holders Thereof, of Units Consisting of Certain Detachable Rights

AGENCY: Commodity Future Trading Commission.

ACTION: Proposed Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to issue an Order pursuant to section 4c(b) of the Commodity Exchange Act ("Act"), 7 U.S.C. 6c(b), which generally grants the Republic of Uruguay an exemption from the requirements of part 32 of the Commission's regulations. The Order would permit Uruguay to issue and sell units consisting of certain notes and related but detachable rights, and permit their subsequent resale by the holders thereof. The bonds and rights, which will be issued initially as a unit, are part of the restructuring of approximately U.S. $1.6 billion of Uruguay's medium and long-term commercial bank debt, which is being undertaken in accordance with a policy initiative of the U.S. Department of the Treasury popularly known as the "Brady Plan." The rights, which are economically equivalent to commodity options, will afford the holders the possibility of receiving payments based on favorable changes in the prices of beef, wool and rice, which are three of Uruguay's principal exports, and petroleum, which is its principal import. Interested persons are being provided with an opportunity to submit written comments concerning the proposed order.

DATES: Written comments must be received by the Commission by close of business on February 14, 1991.

ADDRESSES: Interested persons should submit their written views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–6314.

FOR FURTHER INFORMATION CONTACT: Ellyn S. Roth, Attorney, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–9880.

SUPPLEMENTARY INFORMATION: The Commission proposes to issue the following order:

Order Authorizing Uruguay To Issue and Sell, and Holders Thereof To Resell, Units Consisting of Certain Detachable Rights

By letters to the Commodity Futures Trading Commission dated January 21 and February 4, 1991 from their counsel, the Republica Oriental del Uruguay ("Uruguay"), Banco Central de Uruguay ("Banco Central") and the Bank Advisory Group for Uruguay (the "Bank Advisory Group"), respectively, have requested exemptive relief by order of the Commission pursuant to section 4c(b) of the Commodity Exchange Act, 7 U.S.C. 6c(b) ("CEA" or "Act"), in connection with (i) the proposed issuance and sale by Banco Central of Units (the "Units") consisting of certain fixed-rate debt obligations (the "Notes") and detachable Value Recovery Rights (the "Rights") that, commencing 5½ years after the date of issuance, will afford the holder thereof the possibility of receiving payments if there are favorable changes in the relationship between the levels of selected price indices for certain Uruguayan exports and imports and (ii) the resale thereof by the holders thereof. As is more fully described below, the Rights are instruments the value of which is based on changes in the price of beef, wool and rice, which are three of Uruguay's principal exports, and petroleum, which is its principal import.

In general, the Commission understands that the Units are to be issued as part of the restructuring of approximately U.S. $1.6 billion of Banco central's medium- and long-term external commercial bank debt and are described in the 1990 Uruguay Financing Program (the "Financing Program"), a copy of which has been provided to the Commission as an attachment to the January 21, 1991 letter. The Financing Program sets forth the proposed terms pursuant to which members of the international financial community that currently have loans outstanding to Banco Central (the "Banks") would commit to the restructuring of that outstanding indebtedness. The Commission also understands that the Financing Program has been designed in accordance with a policy initiative of the U.S. Department of the Treasury popularly known as the "Brady Plan" that is intended to provide a framework for the restructuring of indebtedness of sovereign debtor nations to the international lending community.

Based upon the representations set forth in the January 21, 1991 letter and the attachments thereto (including the Financing Program), the Commission understands the facts to be as follows:

Issuance of the Notes and Rights. Under the Financing Program, each Bank may exchange any or all of Banco Central's external medium- and long-term debt outstanding under the Refinancing Agreement dated as of March 4, 1988 ("Eligible Debt") held by it for Collateralized Fixed Rate Notes (*i.e.* the Notes), in an aggregate principal amount equal to the aggregate principal amount of the Eligible Debt exchanged for such Notes, and associated Rights in an aggregate amount as described below.

Each Bank participating in the Financing Program will also have the option of (i) tendering all or a portion of its Eligible Debt to Banco Central for cash at a purchase price equal to 56% of the principal amount of the Eligible Debt so tendered and (ii) exchanging all or a portion of its Eligible Debt for floating rate Debt Conversion Notes and purchasing New Money Notes of Banco Central over a specified period pursuant to the Financing Program. The Note exchange option under the Financing Program is designed to lessen Banco Central's overall debt burden by reducing and fixing the rate of interest payable in respect of indebtedness held by the Banks.

For reasons relating to the tax treatment of the Notes and the different income tax positions of the Banks, the Notes will be issued in two series, Series A and Series B. Each series will be substantially the same except that the Series B Notes are expected, subject to certain conditions, to be issued at least 30 days after the date on which the Series A Notes are issued and will not be transferable until at least 30 days after they are issued. All Rights will have identical terms regardless of whether they are issued in connection with Series A or Series B Notes.

Neither the Units, the Notes nor the associated Rights will be registered under the Securities Act of 1933, as amended (the "Securities Act"), although their issuance and transfer will be subject to compliance with applicable laws of various countries, including U.S. securities and commodities laws and certain procedures as described more fully below. The Units will be issued for the account of Banks that either (i) are "U.S. Persons" as defined in Regulation S promulgated under the Securities Act ("Regulation S"), (ii) have received the Financing Program in the United States or (iii) have sent their telex commitment to the Financing Program from a location in the United States (collectively referred to herein as "U.S. Purchasers") on a private placement basis exempt

from the registration requirements of the Securities Act pursuant to Section 4(2) thereof as a transaction not involving any public offering. Units to be issued for the account of purchasers other than U.S. Purchasers ("Non-U.S. Purchasers"), including foreign agencies and branches of certain U.S. banks, will be issued under procedures consistent with Regulation S.

Units will be issued only in registered form. Each Note will be issued together with a Right, which will be detached from the associated Note and will become separately tradeable shortly following issuance of such Note. The Notes and the Rights to be issued to U.S. Purchasers will initially be issued in the name of Citibank, N.A. as registrar (the "Registrar") in temporary global form pending mandatory conversion into definitive Notes and Rights not later than 45 days after the issuance thereof. Notes and Rights to be issued to Non-U.S. Purchasers will be issued in permanent global form and registered in the name of and held by a common depositary for Centrale de Livraison de Valeurs Mobilieres, S.A. ("Cedel") and for Morgan Guaranty Trust Company of New York, Brussels office, as operator of the Euroclear Clearance System ("Euroclear"). This will facilitate trading of beneficial interests in the Notes and the Rights through the book-entry electronic transfer systems maintained by Euroclear in Brussels and Cedel in Luxembourg.

While the Notes and the associated Rights will initially be issued in global form as a single Unit, following detachment as described above and, in the case of Notes and Rights initially issued to U.S. Purchasers, conversion to definitive certificates, all subsequent transfers of the Notes and the Rights will be monitored by a registrar and transfer agents, as described below. While such monitoring will not be possible with respect to transfers within Euroclear and Cedel due to operational limitations in their clearing systems, current procedures contemplate that in order to obtain a definitive certificate for a beneficial interest in the global Right held on behalf of the Euroclear and Cedel systems, or to transfer Rights in or out of the Euroclear and Cedel systems, the holder requesting such exchange (and, in the case of a transfer in or out of the Euroclear Cedel systems, the transferor and the transferee) will be required to satisfy certification requirements as restrictive as those which apply to transfers of Rights in definitive form.

Payments will be made on the Rights through a fiscal agent located in New York City. The Notes and the Rights will carry the unconditional and irrevocable full faith and credit guarantee of Uruguay in respect of principal and interest due on the Notes and any payments due on the Rights, respectively.

Application will be made to list the Notes on the Luxembourg Stock Exchange. The Rights will not be listed on any U.S. or foreign contract market, board of trade or exchange and it is anticipated that any transfers of the Rights will take place in privately negotiated transactions, not on an organized securities or futures exchange.

Description of the Notes. Notes will be denominated only in U.S. Dollars and will bear interest at a fixed rate of 6.75% per annum. The rate of interest and amount of principal payable on the Notes will not be based in any respect on fluctuations in the volume or market value of Uruguay's beef, rice or wool exports or its petroleum imports or any fluctuations in the price of any similar or other commodity price index or any contract available on any organized futures exchange.

Each series of Notes will be repayable in U.S. Dollars in a single installment on the 30th anniversary of the issue date for such series. Notes will be issued in minimum denominations of U.S. $250,000 or such lesser amount as may equal the entire principal amount of Notes to be issued to a Bank. The Notes will be redeemable at par, at the option of Banco Central, subject to certain procedural and documentary conditions. Payment in full of the principal amount of the Notes at maturity will be secured by a pledge by Banco Central of U.S. Treasury zero-coupon obligations and other senior, direct obligations of the U.S. Treasury expressly backed by the full faith and credit of the United States Government. Separate collateral will be provided for each series of Notes. Notwithstanding any event of default on, or acceleration of, the Notes, holders of Notes will have no recourse to this collateral until the final maturity date of such Notes.

Interest will be payable on Series A Notes on July 2, 1991 and each successive January 2 and July 2 thereafter, on Series B Notes on December 2, 1991, October 2, 1992 and each successive April 2 and October 2 thereafter and on both Series A and Series B Notes at final maturity. A portion of the interest payable on each series of Notes will also be collaterialized by the pledge by Banco Central of cash or certain permitted investments. The aggregate amount of the interest collateral for the Notes of each series will be equal to the aggregate amount of 18 months of interest payments due on the outstanding Notes of such series.

The two series of Notes will be treated separately for certain purposes relating to, among other things, voting and events of default as more fully described in the Financing Program.

Description of the Rights. Each Right will entitle the holder thereof to receive 50 separate, contingent payments determined in accordance with the following formual on payment dates occurring on the 5½ year anniversary of the issue date of the Series A Notes, on January 2, 1997 and on each successive July 2 and January 2 thereafter until January 2, 2021 (each such date being a "Payment Date"). Each Right will be denominated in "units" and each Bank will receive one unit in respect to each U.S. $250,000 in principal amount of Eligible Debt exchanged for Notes (or fractional amounts permitted by the relevant documentation).

A holder of one unit of a Right will be entitled to receive on each Payment Date an amount equal to the lesser of the "Formula Amount" and U.S. $3.750. For this purpose, the "Formula Amount" is equal to the product of U.S. $250 multiplied by the excess (if any, rounded down to the nearest whole number) of the "Commodity Terms of Trade Index" over 110. The "Commodity Terms of Trade Index" relating to each Payment Date will be caluclated as of a month-end approximately three months prior thereto, in respect of a "Reference Period" of 36 months, on the basis of the following formula:

$$\text{Commodity Terms of Trade Index} = \left(\frac{B.288 \times R.158 \times W.554}{P} \right) \times 100$$

For purposes of this formula, B, R, W and P each equals the quotient obtained by dividing the applicable "Reference Price" for such "Reference Period" for beef, rice, wool and petroleum, respectively, by the applicable "Base Price" for beef, rice, wool and petroleum, respectively. For this purpose, the "Reference Price" for beef, rice, wool and petroleum is the arithmetic mean of the monthly prices published in The International Monetary Fund's monthly publication *International Financial Statistics* for the 36 months comprising the "Reference Period".[1] The "Base Prices" for beef, rice, wool and petroleum are 85.5, 405.5, 975.1 and 17.2, respectively, each of which is the arithmetic mean of the monthly prices which were so published for such commodity for the 36-month period commencing on July 1, 1987 and ending on June 30, 1990.[2]

Any redemption of Notes will not affect the right of any holder to receive payments in respect of the Rights originally issued with such Notes.

Secondary Transfers of the Rights. From and after the date on which the Notes and the Rights are issued, except as governed by the Notes and Rights, all ownership provisions and transfer provisions will be governed by a Fiscal Agency Agreement (the "Fiscal Agency Agreement") among Banco Central, as Issuer, the Registrar and Citicorp Investment Bank (Luxembourg) S.A. (a Citibank, N.A. affiliate), as Authenticating Agent, Transfer Agent and Paying Agent.

In order to prevent sales of the Rights to members of the general public, the Rights will contain restrictions on the manner in which they can be resold and the types of persons and entities to whom they may be resold. In addition, except for book-entry transfers effected through the Euroclear or Cedel systems, throughout the entire 30-year term of the Rights, all transfers of Rights will be subject to the following requirements and procedures: [3]

(i) The transferor of a Right will be required to certify to the Registrar that the transfer either (X) is a private transaction not involving any general solicitation or advertising or (Y) is to a non-U.S. person (as defined in Regulation S) as a result of an offer and sale made in an offshore transaction (as defined in Regulation S), without any directed selling efforts (as defined in Regulation S); and

(ii) The transferee of a Right will be required to certify to the Registrar, in the case of a private transaction, that:

(1) It is an Eligible Institutional Investor, which for this purpose will be defined to be:

(a) Any bank, as defined in Section 3(a)(2) of the Securities Act;

(b) Any insurance company, as defined in Section 2(13) of the Securities Act;

(c) Any investment company registered under the Investment Company Act of 1940, as amended; or

(d) Any corporation with assets of not less than U.S. $100,000,000;

(2) It is purchasing such Right for its own account and not with a view to any distribution thereof within the meaning of the Securities Act; and

(3) It will not sell or transfer the Right transferred to it except:

(a) In a private transaction not requiring registration under the Securities Act (not involving any general solicitation or advertising) to an Eligible Institutional Investor and in which it (as transferor) and its transferee provide the certificates described herein to the Registrar; or

(b) In a transaction made in compliance with Rule 904 of Regulation S to a person that is not a U.S. person (as defined in Regulation S) and is not purchasing the Right on behalf of a U.S. person and in which the certificates described herein are provided to the Registrar as above;

and, in the case of clauses (1), (2), or (3), to acknowledge that the Rights are not registered under the Securities Act and contain a restrictive legend to that effect and further to the effect that transfers of the Rights in violation of the terms and conditions of the Rights and of the Fiscal Agency Agreement may constitute a violation of applicable laws, including the U.S. commodities laws (the "Restrictive Legend");

(iii) The transferee of a Right will be required to certify, in the case of an offshore transfer of a Right to a non-U.S. Person, that:

(1) It is not a U.S. Person, as defined in Regulation S, and is not purchasing such Right on behalf of any U.S. person;

(2) It is purchasing such Rights for its own account and not with a view to any distribution thereof within the meaning of the Securities Act; and

(3) It will not sell or transfer the Rights except in the circumstances, and upon delivery of the certificates, describned in clauses (4) (a) and (b) above;

and to acknowledge that the Rights are not registered under the Securities Act and contain the Restrictive Legend;

(iv) Under no circumstances will the Registrar deliver a Right not bearing the Restrictive Legend; and

(v) In order to assure compliance with the foregoing restrictions, the Registrar will be contractually required to have received the appropriate certificate or certificates in order to recognize any transfer of a Right.

With respect to transfers of beneficial interests in the permanent global Rights within the Euroclear and Cedel book-entry systems, transferors and transferees will be required to furnish documentation to each other certifying compliance with the limitations on secondary transfers described above.

Book-entry transfers of beneficial interests in any permanent global Right within the Euroclear and Cedel systems cannot be conditioned on receipt of certifications in the manner required for transfers of definitive Rights. However, in order to obtain a definitive Right in exchange for a beneficial interest in the global Right held for the Euroclear and Cedel systems or to effect a transfer of a Right in or out of Euroclear and Cedel, the holder requesting such exchange (or, in the case of such a transfer, the transferor and transferee) will be required to comply with the certification requirements described above as applicable to transfers of definitive Rights.

Based on these facts, and in recognition of the public policy objectives served in facilitating the restructuring of sovereign debt in the international financial community, and

[1] The official commodity designations used in *International Financial Statistics* are Beef (US cents/pound)—United States (New York), Rice (US$/metric ton)—United States (New Orleans), Wool (US cents/kilogram)—Australia—NZ (UK) 64s and Petroleum, spot (US$/barrel)—U.K. Brent (collectively referred to herein as the "Indices").

[2] As indicated in the formula, each of the values for beef, rice and wool are weighted exponentially in agreed amounts in relation to each other to reflect, in rough measure, applicable exports for such commodities in the Uruguayan market.

[3] These requirements and procedures apply in the context of any transfer of a Right regardless of whether such transfer includes an associated Note.

the fact that the issuer of the Units consisting of certain Notes and Rights is a sovereign nation, the Commission finds that it would not be contrary to the public interest should the Units be issued and sold by Uruguay or be resold by the holders thereof, as described above. Accordingly, pursuant to its authority set forth in section 4c(b) of the Commodity Exchange Act, 7 U.S.C. 6c(b), the Commission hereby exempts from the provisions of part 32 of the Commission's rules (except for the requirements of Commission Rules 32.8 and 32.9, 17 CFR 32.8 and 32.9) the issuance and sale by Uruguay of the Units consisting of the Notes and associated Rights, and the resale of the Notes and/or associated Rights by the holders thereof, as described above.

This order does not excuse Uruguay, the Banks or other holders of the Rights from complying with any otherwise applicable provisions of the Commodity Exchange Act or regulations thereunder, and is based upon the representations made in the January 21 and February 4, 1991 letters to the Commission and the attachments thereto. Any different, changed, or omitted facts might require the Commission to reach different conclusions.

It is so ordered.

Authority: Section 4c(b) of the Commodity Exchange Act 7 U.S.C. 6c(b).

Issued by the Commission in Washington, DC on February 5, 1991.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 92-3071 Filed 2-6-91; 8:45 am]

BILLING CODE 6351-06-M

DEPARTMENT OF DEFENSE

Department of the Navy

Concept Development & Commercialization Corp., et al.; Intent to Grant Co-Exclusive License

AGENCY: Department of the Navy, DoD.

ACTION: Intent to grant co-exclusive patent licenses; Concept Development & Commercialization Corp., and Brunswick Biomedical Technologies, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant revocable, nonassignable, co-exclusive licenses in the United States to practice the Government-owned inventions described in U.S. Patent No. 4,685,462, "Method and Apparatus for Treatment of Hypothermia by Electromagnetic Energy", issued August 11, 1987, to Concept Development & Commercialization Corp., and to Brunswick Biomedical Technologies, Inc.

Anyone wishing to object to the grant of these licenses has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217-5000.

DATES: February 7, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 N. Quincy Street, Arlington, Virginia 22217-5000, telephone (703) 696-4001.

Dated: January 28, 1991.

W.T. Baucino,

LT, JAGC, USNR, Alternate Federal Register Liason Officer.

[FR Doc. 91-2904 Filed 2-6-91; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

National Council on Vocational Education; Meeting

AGENCY: National Council on Vocational Education, Education.

ACTION: Notice of public meeting of the Council.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Council on Vocational Education. This notice describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES AND TIME: February 25, 1991 (Ambassador Room).

ADDRESSES: Embassy Suites Hotel, 1250 22nd St. NW., Washington, DC 20037, (202) 857-3388.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Winterton, Executive Director, 330 C Street SW., MES—Suite 4080, Washington, DC 20202-7580, (202) 732-1884.

SUPPLEMENTARY INFORMATION: The National Council on Vocational Education is established under section 431 of the Carl D. Perkins Vocational Education Act, Public Law 98-524, 5 U.S.C.A. appendix 2.

The Council is established to:

(A) Advise the President, the Congress, and the Secretary of Education concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to Congress; and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

The meeting of the Council is open to the public. The proposed agenda includes: Welcoming new members, Council Reports, and reports on: (1) National Governors' Association "Excellence at Work", (2) Hispanic Education Issues, (3) Current Initiatives of State Councils, and (4) a presentation on "America's Choice: High Skill or Low Wages". Initiatives of the Council will also be discussed. Records are kept of all Council proceedings, and are available for public inspection at the above address from the hours of 9 a.m. to 4:30 p.m.

Dated: February 1, 1991.

Joyce Winterton,

Executive Director.

[FR Doc. 91-2905 Filed 2-6-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements

collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed March 11, 1991. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below).

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586–2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–592
3. 1902–0157
4. FERC–592, Marketing Affiliates of Interstate Pipelines
5. Extension
6. On Occasion, Monthly, Quarterly
7. Mandatory
8. Business or other for-profit
9. 55 respondents
10. 12 responses
11. 10.6 hours per response
12. 6,996 hours
13. The information filed is to support the monitoring of pipeline marketing affiliate activity so as to deter undue discrimination by pipeline companies in favor of marketing affiliates and protect non-affiliates from discrimination.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC January 31, 1991.

Yvonne M. Bishop,

Director Statistical Standards Energy Information Administration.

[FR Doc. 91–2990 Filed 2–6–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project Nos. 6555–002, et al.]

Hydroelectric Applications (John A. Webster, Jr., et al); Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection.

1 a. Type of Application: Surrender of a 5 MW or less Exemption.

b. Project No.: 6555–002.

c. Date filed: December 13, 1990.

d. Applicant: John A. Webster, Jr.

e. Name of Project: Stony Brook.

f. Location: Murphy Creek, Napa County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact:

Mr. John A. Webster, Jr., 6440 Wild Horse Valley Road, Napa, CA 94558, (707) 255–8258.

i. FERC Contact: Mr. Surender M. Yepuri, (202) 219–2847.

j. Comment Date: March 14, 1991.

k. Description of Proposed Action: The exemptee requests surrender of its exemption, stating operations are terminated since planned micro-hydroelectric power technology development work is complete and the seasonal stream water flow is insufficient to make it worthwhile to continue operations. The existing project consists of a 4-foot-high, 3½-foot-long masonary diversion; a 3-inch-diameter, 800-foot-long penstock; a powerhouse containing a 2-kW generating unit; and a transmission line, all located on Applicant's land.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

2 a. Type of Application: Transfer of License.

b. Project No.: 10852–001.

c. Date filed: December 31, 1990.

d. Applicant: Ace Ranch Associates (transferor) and Richard Bertea (transferee).

e. Name of Project: Ace Ranch Project.

f. Location: On the West Fork Carson River in Alpine County, California, near the towns of Woodfords and Paynesville. T.11N, R.20E Mt. Diablo Meridian and Base.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a), 825(r).

h. Applicant Contact:

Arthur E. Hall, General Partner, Ace Ranch Associates, P.O. Box 1479, Minden, NV 89423, (702) 782–5174

Mr. Richard Bertea, c/o Parker Hannifan, 18321 Jamboree, Irvine, CA 92715.

i. Commission Contact: Ms. Deborah Frazier-Stutely at (202) 219–2842.

j. Comment Date: April 16, 1991.

k. Description of Proposed Action: On November 30, 1990, a minor constructed license was issued to Ace Ranch Associates. Ace Ranch Associates proposes to transfer the license to Richard Bertea, a citizen of the United States of America. The licensee certifies that it has fully complied with the terms and conditions of its license, and obligates itself to pay all annual charges accrued under the license to the date of transfer. The transferee accepts all the terms and conditions as though it were the original licensee.

l. This notice also consists of the following standard paragraphs: B and C.

3 a. Type of Application: Preliminary Permit.

b. Project No.: 10990–000.

c. Date filed: August 8, 1990.

d. Applicant: City of Redding, California.

e. Name of Project: Spring Creek.

f. Location: On lands administered by the Bureau of Land Management, the U.S. Forest Service, and the Bureau of Reclamation (BOR) on Spring Creek and the BOR's Keswick Reservoir on the Sacramento River, in Shasta County, California. Township 33 N Range 5 W.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact:

Mr. Robert M. Chistofferson, City of Redding, 760 Parkview Avenue, Redding, CA 96001–3396, (916) 224–4300.

i. FERC Contact: Michael Spencer at (202) 219–2846.

j. Comment Date: April 9, 1991.

k. Description of Project: The proposed pump storage project would consist of: (1) A storage reservoir on Spring Creek formed behind a 185-foot-high dam with a surface area of 55 acres, a total storage capacity of 4,019

acre-feet, and a normal surface elevation ranging between 1,820 and 1,758 feet msl; (2) a 11-foot-diameter, 3,390-foot-long penstock; (3) a powerhouse/pump station containing motor/generator and pump/turbine units with a total installed capacity of 104 MW and producing an estimated average annual generation of 183 GWh; (4) two transmission lines; Route A would be 7.5-miles-long to the City's substation and Route B would be 5.8-miles-long to Western Area Power Administration's substation. The project would pump water from the BOR's Keswick Reservoir on the Sacramento River to supplement Spring Creek's inflow to the proposed reservoir. Stored water would be released for power generation during peak demand periods. No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $300,000.

l. Purpose of Project: Project power would be sold or used by the City.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

4 a. Type of Application: Preliminary Permit.

b. Project No.: 11062–000.

c. Dated filed: December 17, 1990.

d. Applicant: Magic Valley Hydro.

e. Name of Project: Lower Cedar Creek.

f. Location: On Lower Cedar Creek and an unnamed tributary in Custer County, Idaho. The project would be located within Challis National Forest and on land administered by the Bureau of Land Management; Townships 7 and 8 North, Range 24 West, Boise Meridian.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact:

Mr. Dick Graves, Magic Valley Hydro, 2082 S. 2000 E., Gooding, ID 83330, (208) 934–5180.

i. FERC Contact: Mr. James Hunter, (202) 219–2839.

j. Comment Date: April 1, 1991.

k. Description of Project: The proposed project would consist of: (1) two concrete inlet structures at elevation 8,000 feet; (2) a 16-inch-diameter, 6,600-foot-long penstock from the inlet on Lower Cedar Creek; (3) a 20-inch-diameter, 2,650-foot-long penstock from the inlet on the tributary; (4) a 26-inch-diameter, 26,400-foot-long penstock; (5) a powerhouse at elevation 6,000 feet containing a generating unit rated at 2,660 kilowatts and producing an average annual output of 14.6 gigawatthours; (6) a 1-mile-long tailrace dispersing flows into underlying gravel; and (7) an 8,200-foot-long, 12.5-kilovolt transmission line connecting to an existing Utah Power & Light Company line. The applicant estimates the cost of the work to be performed under the permit to be between $50,000 and $60,000.

l. Purpose of Project: Power generated would be sold to Utah Power & Light Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

5 a. Type of Application: Preliminary Permit.

b. Project No.: 11070–000.

c. Dated filed: December 31, 1990.

d. Applicant: Paul C. Rizzo Associates, Inc.

e. Name of Project: Tionesta Dam Hydro Project.

f. Location: On the Tionesta Creek, in Tionesta Township, Forest County, Pennsylvanna.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Marcy C. Golato (tag), (202) 219–2804.

i. FERC Contact:

Robert D. Rizzo, Paul C. Rizzo Associates, Inc., 300 Oxford Drive, Monroeville, PA 15146, (412) 856–9700.

j. Comment Date: March 4, 1991.

k. Competing Application: 11048–000.

l. Dated Filed: November 13, 1990.

m. Description of Project: The proposed project would utilize the existing Department of the Army, Pittsburgh District Corps of Engineer's dam and would consist of: (1) A proposed penstock approximately 19 feet in diameter and 11,875 feet long; (2) a proposed powerhouse containing a new turbine-generator set at a total installed capacity of 6 megawatts; (3) a proposed tailrace approximately 750 feet long; (4) a proposed transmission line predicted to be about 200 feet long at 34.5 kilovolts; and (5) appurtenant. The proposed project would have an average annual generation of about 20,000,000 kilowatthours and the estimated cost of the studies under permit is $150,000.

n. This notice also consists of the following standard paragraphs: A8, A10, B, C, and D2.

Standard Paragraphs

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to an in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to

proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedures, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027 (810 1st), at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to Applicant's representatives.

Dated: February 1, 1991, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 91–2876 Filed 2–6–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP90–108–000, RP90–107–000, RP90–103–000]

Columbia Gas Transmission Corp., et al.; Informal Settlement Conference

January 31, 1991.

In the matter of: Columbia Gas Transmission Corp.; Columbia Gulf Transmission Company; Pennsylvania Natural Gas Assn. and Independent Oil & Gas Assn. of West Virginia v. Columbia Gas Transmission Corp.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, Feruary 6, 1991 at 1 p.m. and Thrusday, February 7, 1991 at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations. (18 CFR 385.214).

For additional information, contact Hollis J. Alpert, (202) 208–1093 or Jennifer B. Corwin, (202) 208–0740.

Lois D. Cashell,

Secretary.

[FR Doc. 91–2875 Filed 2–5–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. JD91–02876T; JD91–02877T; JD91–02878T]

The Department of Natural Resources and Conservation, Board of Oil and Gas Conservation for the State of Montana and the United States Department of the Interior, Bureau of Land Management, Determinations Designating Tight Formations

January 31, 1991.

Take notice that on January 25, 1991, the Department of Natural Resources and Conservation, Board of Oil and Gas Conservation for the State of Montana (Montana) and the United States Department of the Interior, Bureau of Land Management (BLM) submitted the above-referenced joint notices of determination to the Commission, pursuant to § 271.703(c)(3) of the Commission's regulations, that the Bowdoin (Carlile) Formation,[1] the Greenhorn Limestone member of the Greenhorn Formation,[2] and the Phillips (Lower Greenhorn) member of the Greenhorn Formation [3] quality as tight formations under section 107(b) of the Natural Gas Policy Act of 1978. The notices of determination cover certain State and Federal lands located in Phillips County, Montana, and include Montana's and BLM's findings that the formations (each of which is part of the Lower Colorado Group) meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The notices of determination are available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Persons objecting to any of these determinations may file a protest, in accordance with 18 CFR §§ 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91–2874 Filed 2–6–91; 8:45 am]

BILLING CODE 6717–01–M

[1] Docket No. JD91–02876T, Montana-2.

[2] Docket No. JD91–02877T, Montana-3.

[3] Docket No. JD91–02878T, Montana-4.

Office of Fossil Energy

[FE Docket No. 90–94–NG]

Clajon Marketing, L.P., Order Granting Blanket Authorization to Export Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Clajon Marketing, L.P., blanket authorization to export up to a total of 365 Bcf of natural gas over a two-year period beginning on the date of the first export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 31, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-2985 Filed 2-6-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-113-NG]

Coenergy Ventures, Inc.; Application to Export Natural Gas to Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on December 31, 1990, of an application filed by Coenergy Ventures, Inc. (CVI), requesting blanket authorization to export up to 20 Bcf of natural gas from the United States to Canada over a two-year period commencing with the date of first delivery. CVI intends to use existing pipeline facilities within the United States and at the international border for transportation of the exported natural gas. CVI states that it will submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m. e.s.t, March 11, 1991.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-094, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-7751.

Lot Cooke, Office of Assistant General Counsel, for Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-0503.

SUPPLEMENTARY INFORMATION: CVI is a Michigan corporation with its principal place of business in Detroit, Michigan. CVI requests authorization to export natural gas for its own account or as an agent on behalf of domestic suppliers or Canadian purchasers. CVI expects that most of the gas exported under the requested authorization will be sold on a firm or interruptible basis to unaffiliated purchasers in Canada under terms and conditions, negotiated on a case-by-case basis, and which reflect competition for the gas supply and services being offered. The application states tht the contractual arrangements will benefit domestic producers and gas-producing states, as well as the U.S. as a whole by reducing the trade deficit.

This export application will be reviewed under section 3 of the Natural Gase Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for domestic gas that would be exported under the proposed arrangements. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final option and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of CVI's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except Federal holidays.

Issued at Washington, DC on January 4, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-2986 Filed 2-6-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-100-NG]

PSI Gas Marketing, Inc; Order Granting Authorization to Export Natural Gas

AGENCY: Department of Energy Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to export natural gas to Canada and Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting PSI Gas Marketing, Inc. (PGM) authorization to export natural gas to Canada and Mexico. The order issued in FE Docket No. 90-100-NG authorizes PGM to export from the United States to Canada and Mexico up to 146 Bcf of natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 31, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-2987 Filed 2-6-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-45-NG]

Transco Energy Marketing Co.; Order Granting Final Long-Term and Short-Term Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting long-term and short-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Transco Energy Marketing Company (TEMCO) authorization to import, utilizing new facilities, up to 75,000 Mcf per day of Canadian natural gas during a term beginning on the effective date of this order and ending October 31, 2002, on behalf of three local distribution companies (LDCs), Baltimore Gas & Electric Company, Long Island Lighting Company and Public Service Electric & Gas Company. This order also grants TEMCO blanket authorization to import, utilizing new facilities, up to 75,000 Mcf per day of natural gas authorized but not purchased under the LDC contracts for a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Program Docket Room, room 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 31, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-2988 Filed 2-6-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-97-NG]

City of Warroad, Minnesota; Order Granting Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order in FE Docket No. 90-97-NG granting authorization to the City of Warroad, Minnesota (Warroad) to import from Canada up to 550 MMcf of natural gas annually (365 MMcf on a firm basis and 185 MMcf for overrun supplies) from the date on which gas flows under the unbundling of Inter-City Minnesota Pipelines Ltd. (Inter-City) through October 31, 1995. The natural gas would be imported from Canada to a point on the U.S.-Canadian border near Sprague, Manitoba.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 31, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-2989 Filed 2-6-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed During the Week of December 28, Through January 4, 1991

During the Week of December 28 through January 4, 1991, the applications for relief listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy. A submission inadvertently omitted from an earlier list has also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: February 1, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

REFUND APPLICATIONS RECEIVED

[Week of December 28 through January 4, 1991]

Date received	Name of refund proceeding/name of refund applicant	Case No.
02/26/90	Starr Gas Co.	RF304-12164.
12/31/90	Phillips 66	RF330-1.
01/02/91	Charles B. Wise	RC272-108.
01/02/91	Thomson Oil Co	RF326-205.
01/02/91	Era Helicopters Inc	RF326-206.
01/04/91	Virg's Arco Service	RF304-12165.
12/28/90 thru 01/04/91	Crude oil refund, applications received	RF272-85639 thru RF272-85759.
12/28/90 thru 01/04/91	Gulf oil refund, applications received	RF300-14629 thru RF300-14690.

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/name of refund applicant	Case No.
12/28/90 thru 01/04/91	Texaco oil refund, applications received	RF321-12442 thru RF321-12518.

Date	Name and location of applicant	Case No.	Type of submission
Jan. 4, 1991	Amoco II/Alabama Montgomery, AL	RM251-243	Request for Modification/Rescission in the Amoco II Refund Proceeding. If granted: The December 30, 1986 Decision and Order (RQ251-341) issued to Alabama would be modified regarding the state's application for refund submitted in the Amoco II second stage refund proceeding.

[FR Doc. 91-2991 Filed 2-6-91; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-64013; FRL 3843-6]

Cancellation of Pesticides for Non-Payment of 1990 Registration Maintenance Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The October, 1988 amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) imposed a new requirement for payment of annual maintenance fees to keep pesticide registrations in effect. The fee due last March 1 has gone unpaid for about 4,500 registrations. Section 4(i)(5)(D) of FIFRA provides that the Administrator may cancel these registrations by order and without a hearing; orders to cancel all but a few of them have been issued within the past few days. The Agency is deferring cancellation for certain of these registrations, however, to permit time for affected users to explore alternatives to cancellation directly with the registrants.

DATES: Reports of agreements to support continued registration or transfer of the registrations for which cancellation is being deferred must be received by May 8, 1991.

FOR FURTHER INFORMATION CONTACT: To report agreements to support continued registration of any of the products for which cancellation has been deferred, for instructions on payment of delinquent maintenance fees for these products, or for further information on the maintenance fee program in general, contact by mail: John M. Carley, Office of Pesticide Programs (H7504C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 222, CM # 2, 1921 Jefferson Davis Highway South, Arlington, VA 22202, (703) 557-2315.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 4(i) of FIFRA as amended in October, 1988 requires that all pesticide registrants pay an annual registration maintenance fee, due by March 1 of each year, to keep their registrations in effect.

In early February of 1990, all holders of either section 3 registrations or section 24(c) registrations were sent lists of their active registrations, along with forms and instructions for responding. They were asked to identify which of their registrations they wished to maintain in effect, and to calculate and remit the appropriate maintenance fees. Most responses were received by the statutory deadline of March 1, or soon thereafter. A supplemental notice was sent in May, however, to registrants who had not responded after acknowledging receipt of the original notice, and individual phone calls were placed as well to hundreds of registrants to remind them of the fee requirement and to clarify their intentions. Late payments of the fees were accepted until November 1, when the actual process of cancellation was begun.

The maintenance fee has been paid for about 20,000 section 3 registrations, or about 83 percent of the registrations on file in January, and for about 3,000 section 24(c) registrations, or about 79 percent of the total on file in January. Cancellations for nonpayment of the maintenance fee affect just under 3,800 section 3 registrations and just over 700 section 24(c) registrations.

EPA is concerned about the possible impacts of such a large number of cancellations, and especially concerned for potential impact on minor uses of pesticides. The Agency has assessed these impacts carefully, and has taken special steps to avoid adverse impacts where possible.

II. Product Cancellations Not Affecting Status of Active Ingredient

Our analyses indicate that the majority of these cancellations are housekeeping transactions. For over 2,200 section 3 registrations (59 percent of the total canceled) no production has been reported since before 1987. This group includes all registrations for 38 active ingredients, which will be dropped from the registration rolls. For another 650 registrations (17 percent of the total canceled) no production was reported in 1989, the last year for which data are available. Thus 76 percent of all the section 3 registrations canceled for non-payment of the maintenance fee are no longer in production. Their disappearance is likely to have no discernable impact on pesticide markets or users.

We believe most of the canceled 24(c) registrations for special local needs are similarly obsolete. We do not have comparable production data for these registrations, but we know that over 64 percent of them were issued more than 5 years ago, most for a finite period of 1 to 5 years. We also know that many have been made obsolete by subsequent section 3 registrations for the same uses.

The remaining cancellations, of about 880 section 3 registrations in current production and about 265 section 24(c) registrations issued in the past 5 years, have been the principal focus of our further impact analyses. In most of these cases—all but 64 registrations—the active ingredients will remain available in other registered products. We anticipate two types of impact for the bulk of these cancellations. First, some of these disappearing registrations will be survived in the market by substantially identical registrations. These substantially identical products may not, however, be readily available

wherever a disappearing product was sold, so there may be local or regional disruptions while distribution patterns are adjusted. We expect these disruptions to be minor and temporary. The cancellation orders generally permit registrants to continue to sell and distribute existing stocks of the canceled products until the due date for the next annual registration maintenance fee, March 1, 1991. Existing stocks already in the hands of dealers or users, however, can generally be used legally until they are exhausted.

The exceptions to these general rules are cases where more stringent restrictions on sale, distribution, or use of the products have already been imposed, through Special Reviews or other Agency actions. The general provisions for disposition of stocks should serve in most cases to cushion the impact of these cancellations while the market adjusts.

Second, in some cases unique uses will disappear, although the active ingredients will remain available for different uses in other products. We cannot estimate how often this may happen. When it does, in addition to possible distribution problems there may be more serious impacts on users of the canceled products. Once again, existing stocks of the canceled products already in channels of trade will be usable to mitigate these impacts in the short term. For the longer term the mechanisms of section 3 amendments and 24(c) registrations will remain available to obtain replacement registrations.

Neither of these types of impact leaves users without the means to replace lost registrations, and neither is considered to justify further deferral of cancellations for non-payment of the maintenance fee. Thus all these registrations for which the active ingredient will remain in other products have been canceled.

III. Cancellations Leading to Disappearance of Active Ingredients

The most significant impacts will arise when an active ingredient with recent production disappears. There are 42 registered active ingredients for which production has been reported in at least 1 year in the span from 1987 through 1989, but for which no 1990 maintenance fees have been paid.

Nine of these 42 ingredients have been the object of earlier Agency regulatory actions; impacts of their disappearance have already been extensively addressed, and will not be reconsidered here. We have canceled all remaining registrations in which these nine ingredients occur.

Ignoring these 9, some 33 active ingredients remain. Four of them were last produced in 1987; 11 others were last produced in 1988; and the remaining 18 reported production in 1989, the last year for which data are available. These 33 ingredients—all with recent production and none subject to prior regulatory action, and all slated to disappear as a consequence of these cancellations—span a broad range of pesticide uses, as summarized in the following Table 1:

TABLE 1.—SUMMARY DISTRIBUTION OF DISAPPEARING ACTIVE INGREDIENTS BY PREDOMINANT USE PATTERN

Use Pattern	Number of Chemicals	Number of Registrations
Agricultural/Ornamental Uses	11	26
Domestic Animal/Pet Treatments	7	20
Disinfectants/ Antimicrobials	15	18
Totals	33	64

These 33 ingredients, grouped in these same general categories of use patterns, are individually listed along with the EPA company number of their registrants in the following Table 2:

TABLE 2.—ACTIVE INGREDIENTS WITH RECENT PRODUCTION PENDING CANCELLATION OF ALL PRODUCTS FOR NON-PAYMENT OF 1990 REGISTRATION MAINTENANCE FEES, IN SEQUENCE BY BROAD USE PATTERN

Chemical Name (Chemical Abstracts Number)	Year Last Prod	Rgistration No.	Product name
A. Agricultural/Ornamental Uses:			
Aminocarb (CAS 2032-59-9)	1987	003125-00206	Matacil Technical
		003125-00327	Matacil 180 Flowable Insecticide
Ammonium thiosulfate (CAS 7783-18-8)	1988	009499-00001	Spurge-X
Bifenox (CAS 42576-02-3)	1988	000264-00460	Bifenox Technical Grade
		000264-00463	Modown Herbicide 4 Flowable
Chlordimeform (CAS 6164-98-3)	1989	000100 MS-86-0005	Galecron 4 EC Insecticide on Cotton
		000100 SC-86-0004	Galecron 4 EC Insecticide on Cotton
Cinnamaldehyde (CAS 104-55-2)	1989	002517-00056	Sergeant's Outdoor Dog and Cat Repellent
		041847-00001	Hefty Dog/cat Repellent
		041847-00004	Hefty Animal Guard Dog/cat Repellent Trash Bags
		041847-00005	Hefty II Animal Guard Dog/cat Repellent Trash Bags
Dinitramine (CAS 29091-05-2)	1989	055947-00037	Dinitramine
Isobutyl 2,4-D (CAS 1713-15-1)	1989	001990-00138	Co-Op Weed-Out Butyl Ester 6-Pound
		001990-00180	Co-Op Weed-Out Butyl Ester 4-Pound
		001990-00401	Techne No. 4 Butyl Ester Weed Killer
		001990-00406	Techne No. 6 Butyl Ester
		034704-00007	Balcom Butyl 6 Ester Weed Killer
		034704-00080	Clean Crop 2,4-D Ester Aerial Non-Emulsifiable
		061272-00002	2,4-D Iso Butyl Ester Technical
1-(8-Methoxy-4,8-dimethylnonyl)-4-(1-methylethyl)benzene (CAS 53905-38-7)	1987	010182-00246	Pro-Drone
Nickel sulfate hexahydrate (CAS 10101-97-0)	1989	000707-00124	Dithane S-31

TABLE 2.—ACTIVE INGREDIENTS WITH RECENT PRODUCTION PENDING CANCELLATION OF ALL PRODUCTS FOR NON-PAYMENT OF 1990 REGISTRATION MAINTENANCE FEES, IN SEQUENCE BY BROAD USE PATTERN—Continued

Chemical Name (Chemical Abstracts Number)	Year Last Prod	Rgistration No.	Product name
Ryania speciosa, powdered stems of (CAS 15662-33-6)	1988	000690-00018	Perkerson's Blam Money Back Guar. Kill All Roaches
		047154-00001	50% Ryania
Terbutryn (CAS 886-50-0)	1988	000100-00540	Terbutryn Technical
		000100 OK-82-0016	Igran 80W on Wheat
		000100 OR-88-0001	Igran 80W
B. Domestic Animal/Pet Treatment:			
Alkenyl* dimethyl ammonium acetate *(75% C18, 25% C16) (CAS 10460-00-1)	1989	005185-00026	Bio Guard HEDS Hatching Egg Detergent Sanitizer
Alkyl* bis(2-hydroxyethyl) ammonium acetate *(as in fatty acids of coconut oil) (No CAS No.)	1989	005185-00026	Bio Guard HEDS Hatching Egg Detergent Sanitizer
Alkyl* dodecylbenzyl dimethyl ammonium chloride *(70% C12, 30% C14) (CAS 87175-02-8)	1989	005185-00026	Bio Guard HEDS Hatching Egg Detergent Sanitizer
Alkyl* trimethyl ammonium bromide *(95% C14, 5% C16) (CAS 1119-97-7)	1989	001457-00015	Bromat
Chlorfenvinphos (CAS 470-90-6)	1988	000059-00189	Dermaton Dust
		000059-00197	Dermaton Dog Collar
		000059-00203	Dermaton III
Phenothiazine (CAS 92-84-2)	1989	000602-00119	Purina Check-Fly and Wormer Block (medicated)
		000602-00120	Purina Check-Fly and Worm Control
		000602-00286	Purina Check-Fly Block II
		006482-00002	Lone Star 28% Equivalent Super Hi-Pro-Fly Medicated
		006482-00003	Lone Star 14% Protein Bar-Fly Hi-Pro-Min Medicated
		007138-00011	Pasture Balancer Cattle Block
		007138-00013	Livestock Fly & Worm Mineral Medicated
		007627-00010	Stockade Kil-A-Pest No. 12 Fly Control Block
		007631-00013	Walnut Grove 4x4 Beef Shake 31 (f)
		009078-00001	Co-Op Pasture Balancer Medicated for Ruminants Only
		009374-00001	Ranch-O Bar-Fly Protein Supplement Block Medicated
		009374-00002	Ranch-O-Bar Fly #2 Hi Boot Mineral Supplement Bloc
		010461-00002	Pasture Aid Bar Fly Block #10
		010461-00009	V.M.S. Enproal Fly Control Supplement
Salicylic acid (CAS 69-72-7)	1989	000387-00006	Glover's Imperial Sarcoptic Mange Ointment for Dog
C. Disinfectant/Antimicrobial Uses:			
1-(Alkyl* amino)-3-aminopropane benzoate *(as in fatty acidsof coconut oil) (CAS 61791-63-7)	1988	008928-00001	Corexit 7675 Bactericide
N-Alkyl*-*N*-ethyl morpholium ethyl sulfate* (66% C18, 25% C16, 8% C18, 1% C14) (CAS 61791-34-2)	1987	001677-00038	Soilax Bathroom Cleaner
		001677-00041	Q-077 Quaternary Ammonium Concentrate
Alkyl* dimethyl benzyl ammonium chloride *(67% C12, 24% C14, 9% C10-C18) (CAS 63349-41-2)	1988	003573-00026	Bowl Quick Liquid Bowl Cleaner
Alkyl* dimethyl 3,4-dichlorobenzyl ammonium chloride *(50%C12, 30% C14, 17% C16, 3% C18) (CAS 8023-53-8)	1989	004000-00060	Lemon Scented Hospital Disinfectant
N-Cetyl-*N*-ethylmorpholinium ethyl sulfate (CAS 78-21-7)	1989	011333-00002	Hy-Test Mildew Spray
Chlorinated glycoluril (CAS 776-19-2)	1987	048482-00004	TCGU Tetrachloroglycoluril
3-Chloro-2-biphenylol, sodium salt (CAS 10605-11-5)	1989	000861-00069	Pine Odor Disinfectant Sav-On Coef. 5
2-Chloro-4-phenylphenol (CAS 92-04-6)	1988	003696-00055	Texize Pine Power Type Disinfectant
		018962-00003	FB
5-Chlorosalicylanilide (CAS 4638-48-6)	1988	018962-00003	FB
3,5-Dibromosalicylanilide (CAS 2577-72-2)	1987	005664-00039	Phenicide A
Dodecyl dimethyl benzyl ammonium naphthenate (No CAS No.)	1988	001100-00013	Nuodex 100 WD
		001100-00014	Nuodex 100 SS
		001100-00042	Nuodex 100 V.T.
Ethanolamine (CAS 141-43-5)	1989	058018-00001	Pro Way Brand Realclean Spray Concentrate
Potassium hydroxide (CAS 1310-58-3)	1989	005664-00037	Bromophene 128
Sodium dihydroxyethylglycine (CAS 17123-43-2)	1988	001297-00015	Buckingham Mint Disinfectant Coef. 5
Sodium nitrite (CAS 7632-00-0)	1989	006095-00003	Improved Air Eactor DDG

The names and addresses of the registrants are listed in sequence by the EPA Company Number in the following Table 3:

TABLE 3.—REGISTRANTS OF ACTIVE INGREDIENTS PENDING CANCELLATION FOR NON-PAYMENT OF 1990 REGISTRATION MAINTENANCE FEE

EPA Company No.	Registrant Name and Address
000059	Coopers Animal Health Inc., 1201 Douglas Ave, Kansas City, KS 66103.
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709.
000387	H. Clay Glover Co., Inc., Box 432, Toms River, NJ 08754.
000602	Purina Mills, Inc., Box 66812, St Louis, MO 63166.
000690	Perk Products & Chemical Co., Inc., Box 100585, Nashville,, TN 37210.
000707	Rohm & Haas Co., Agri. Chemicals Registration, Independence Mall W., Philadelphia, PA 19105.
000861	Uncle Sam Chemical Co. Inc., 575 W 131st St, New York, NY 10027.
001100	Huls America, Inc., Box 365, Piscataway, NJ 08855.
001297	Buckingham Wax Co., Inc., 51–03 Van Dam Street, Long Island City, NY 11101.
001457	Hexcel Corp., 11555 Dublin Rd Box 2312, Dublin, CA 94568.
001677	Ecolab Inc., 370 Wabasha St. Ecolab Center, St Paul, MN 55102.
001990	Universal Cooperatives, Inc., c/o Diana Williams, Box 460, Minneapolis, MN 55440.
002517	Conagra Pet Products Co., 1405 Cummings Drive, Richmond, VA 23220.
003125	Mobay Corp., Agricultural Chemicals Division, Box 4913, Kansas City, MO 64120.
003573	The Proctor & Gamble Co., 6060 Center Hill Rd., Cincinnati, OH 45224.
003696	Dowbrands Inc., Box 368, Greenville, SC 29602.
004000	Southern Chemical Products Co., Subsidiary of Carroll Co., 2900 W. Kingsley Rd., Garland, TX 75041.
005185	Bio-Labs Inc., Box 1489, Decatur, GA 30031.
005664	Cantol Inc., 2211 N American Street, Philadelphia, PA 19133.
006095	Aireactor Of America, Inc., 315 Peck Street, New Haven, CT 06513.
006482	Texas Farm Products Co., PO Box 9, Nacogdoches, TX 75961.
007138	Southern States Cooperative, Inc., 6606 W. Broad Street, Richmond, VA 23230.
007627	Harvest Brands, Inc., Country Club Rd. & 69 Bypass, Box 46, Pittsburg, KS 66762.
007631	Walnut Grove Products, 201 Linn St, Atlantic, IA 50022.
008928	Exxon Chemical Co., 8230 Stedman Street, Houston, TX 77029.
009078	Tennessee Farmers Co-op, Box 3003, Lavergne, TN 37086.
009374	Ragland Mills Inc., Route 8 Box 168, Neosho, MO 64850.
009499	National Chelating Co., 6549 E Somerset Blvd, Paramount, CA 90723.
010182	ICI Americas Inc., New Murphy Rd. & Concord Pike, Wilmington, DE 19897.
010461	V M S Inc., Box 406, Montgomery, AL 36101.

TABLE 3.—REGISTRANTS OF ACTIVE INGREDIENTS PENDING CANCELLATION FOR NON-PAYMENT OF 1990 REGISTRATION MAINTENANCE FEE—Continued

EPA Company No.	Registrant Name and Address
011333	Hy-Test 303 Corp., 9 Meadow Rd, Rutherford, NJ 07070.
018962	Chemie Research & Mfg. Co., Box 181279, Casselberry, FL 32711.
034704	Platte Chemical Co., 419 18th St. Box 667, Greeley, CO 80632.
041847	Mobil Chemical Co., Consumer Products Division, 729 Pittsford-Palmyra Rd, Technical Center Rt #31, Macedon, NY 14502.
047154	G.B. Enterprises, 1900 Elm Ave., Modesto, CA 95351.
048482	EES Corp., Subsidiary of Eltech Systems Corp., 12850 Bournewood Drive, Sugar Land, TX 77478.
055947	Sandoz Crop Protection Cororation, 1300 E. Touhy Ave., Des Plaines, IL 60018.
058018	Professional Chemists, 1005 Hawkeye Drive Box 217, Hiawatha, IA 52233.
061272	Nufarm USA Inc., c/o Registrations Plus, 425 W. 194th Street, Glenwood, IL 60425.

If the last section 3 registration for an ingredient disappears, the section 24(c) registration process is unlikely to be able to compensate for the loss. Thus EPA is deferring cancellation of these 64 registrations to allow adversely affected users to pursue alternatives to cancellation.

We encourage individual users or user groups concerned about the potential loss of these active ingredients to work directly with the identified registrants. It may be possible to persuade them to continue to support the ingredient, or to agree to transfer the registration to a third party who would be willing to support the ingredient. We also encourage users to consult with the Cooperative Extension Service or other local sources to identify alternatives which will remain or may become registered.

If the Agency is notified within 90 days of this notice at the address given above either (1) that the registrant will continue to support the registration, or (2) that an agreement has been reached to transfer the registration to another party, we will retain the registration in full active status as soon as the delinquent maintenance fee payment is received. It should be emphasized, however, that any such registrations would still be subject to all data and other requirements for reregistration, including reregistration fees (except as they may be reduced through the statutory provisions for small businesses or low volume or minor uses).

In addition to publishing this notice in the **Federal Register**, we are sending it directly to the States, to the U.S. Department of Agriculture, and to other parties who have previously expressed concern for minor uses. They should be receiving the notice at approximately the same time it is published. We hope that this notification effort, and the deferral of cancellations for the most sensitive registrations, will serve to prevent any avoidable loss of critical minor use pesticides.

Because so many registrations are involved, it would be impractical to list all the cancellations in this notice. Complete lists of registrations canceled for non-payment of the maintenance fee will, however, be available for reference during normal business hours in the OPP Public Docket, Rm. 248 CM # 2, 1921 Jefferson Davis Highway South, Arlington VA, and at each EPA Regional Office. Product-specific status inquiries may be made by telephone by calling toll-free 1–800–444–7255.

Dated: January 22, 1991.

Linda J. Fisher,

Assistant Administrator, Office of Pesticides and Toxic Substances.

[FR Doc. 91–2965 Filed 2–6–91; 8:45 am]
BILLING CODE 6560–50–F

[OPP–66145; FRL 3843–8]

Receipt of Requests to Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATE: Unless a request is withdrawn, all cancellations will be effective May 8, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Rm. 210, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703) 557–4461.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

The recent 1990 Farm Bill incorporated some specific changes in section 6(f)(1) of FIFRA. In cases where a pesticide is registered for minor agricultural use, it calls for waiting 90 days instead of 30, before cancelling the request. As part of this requirement for making "reasonable efforts" to reach minor users, the requests in this notice will not be cancelled until May 8, 1991.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 26 pesticide registrations under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name
000100-00545	Phosphamidon Technical
000100-00868	Swat 8E Insecticide-Miticide
000237-00009	MSCO #15X Mushroom Zineb Dust
000279-01853	Elgetol Fungicide Apple Thinner
000352-00343	Tersan LSR Fungicide
000400-00409	Terraclor Super-X G/Fungicide
000464-00579	MCP Ester Herbicide
000499-00141	Dog-Stopper
000618-00028	Agri-Strep
000618-00072	Agri-Strep 500
001706-00167	Nalco 3WT-138
002517-00035	Sergeant's Flea Tick Powder
002724-00154	Starbar Smax Rat Mouse Bait
002724-00173	Protex Flea Collar for Dogs
002724-00225	Starbar Golden Sugar Bait
002900-00017	Shepard's Flea Killer
005412-00005	#38 Citrus Pads-Biphenyl Treated
008590-00033	Agway Maneb-Sevin 4,5-5D

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name
009159-00142	Chlorine-Liquefied Gas
009374-00007	Ranch-O Mineral Mix w/ Rabon
010182-00216	Parathion Technical
035915-00002	Oxon Ametryn Technical
035915-00008	Chloridazon Technical
045385-00065	Chem-Tox Malathion 3%
059920-AZ890012	Super IQ Insecticide LC & APT
062550-20005	Cal Hypo Idroklopel

Unless a request is withdrawn by the registrant within ninety (90) days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The names and addresses of record for all registrants of the products in Table 1 are included in sequence by EPA company number in the following Table 2:

TABLE 2.— REGISTRANTS REQUESTING VOLUNTARY CANCELLATIONS

EPA Co. Number	Company Name and Address
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000237	Mushroom Supply Co., Box 486, Toughkenamon, PA 19374.
000279	FMC Corp., Product Registration ACG, 2000 Market St., Philadelphia, PA 19103.
000352	E.I. du Pont de Nemours and Co., Inc., Agricultural Products Dept., Box 80038, Wilmington, DE 19880.
000400	Uniroyal Chemical Co., Inc., 74 Amity Road, Bethany, CT 06525.
000464	Dow Chemical U.S.A., Regulatory Compliance Dept., 1803 Building, Midland, MI 48674.
000499	Whitmire Research Laboratories, Inc., 3568 Tree Ct. Industrial Blvd., St. Louis, MO 63122.
000618	Merck & Co. Inc., Hillsborough Rd., Three Bridges, NJ 08887.
001706	Nalco Chemical Co., One Nalco Center, Naperville, IL 60563.
002517	Conagra Pet Products Co., 1405 Cummings Dr., Richmond, VA 23220.
002724	Zoecon Corp., A. Sandoz Co., 12200 Denton Dr., Dallas, TX 75234.
002900	Shepard Chemical Works, Inc., c/o Registration Consulting Assoc., 12184 Woodland Ct., Auburn, CA 95603.
005412	Citrus-Pak Corp., 600 E. Landsteet Rd., Orlando, FL 32824.
008590	Agway Inc., Crop Services, Box 4933, Syracuse, NY 13221.
009159	Kaiser Aluminum & Chemical Corp., 300 Lakeside Dr., Oakland, CA 94643.
009374	Ragland Mills, Inc., Rte. 8, Box 168, Neosho, MO 64850.
010182	ICI Americas, Inc., Agricultural Products, New Murphy Road & Concorrd Pike, Wilmington, DE 19897.
035915	Oxon Italia S.P.A., c/o Sostram Corp., 70 Mansell Ct., Suite 230, Roswell, GA 30076.
045385	Chem-Tox, Inc., 21 N. 988 Pepper Rd., Barrington, IL 60010.
059920	Biodyne Americas Corp., 6802 96th Ave., S.E., Mercer Island, WA 98040.
062550	Samatec, c/o Enichem Americas, Inc., 1211 Avenue of the Americas, New York, NY10036.

III. Procedures for Withdrawal of Request

Registrants who chose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given earler, postmarked before May 8, 1991. This written withdrawal of the request for cancellation must include a commitment to pay any reregistration or registration maintenance fees due, and to fulfill any applicable unsatisfied date requirements.

IV. Provisions for Disposition of Existing Stocks

The orders effecting these requested cancellations will generally permit registrants to continue to sell and distribute existing stocks of the cancelled products for 1 year after the date of this notice. The orders will also generally provide for use of stocks already in the hands of dealers or users until they are exhausted. Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

Dated: January 18, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91–2966 Filed 2–6–91; 8:45 am]

BILLING CODE 6560–50–F

[PP 8G3680/T603; FRL 3875–7]

Myclobutanil; Renewal of a Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed a temporary tolerance for residues of the fungicide myclobutanil and its metabolites containing both the chlorophenyl and triazole rings (free and bound) in or on the raw agricultural commodity stone fruits group (except dried plums) at 2 parts per million (ppm).

DATES: This temporary tolerance expires October 31, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Lewis, –Product Manager (PM) 21, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. –Office location and telephone number: Rm. 229, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, 703–557–1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of April 19, 1989 (54 FR 15803), stating that a temporary tolerance had been established for residues of the fungicide myclobutanil, alpha-butyl-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile and its metabolites containing both the chlorophenyl and triazole rings (free and bound) in or on the raw agricultural commodity stone fruits group (except dried plums) at 2 parts per million (ppm). This tolerance is renewed in response to pesticide petition (PP) 8G3680, submitted by Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105.

The company has requested a 1-year renewal of a temporary tolerance for residues of the fungicide to permit the continued marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit 707–EUP–119, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136). The scientific data reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Rohm and Haas Co., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires October 31, 1991. Residues not in excess of this amount remaining in or on the above raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

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

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

Authority: 21 U.S.C. 346a(j).

Dated: January 25, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91–2967 Filed 2–6–91; 8:45 am]

BILLING CODE 6560–50–F

[OPTS–53137; FRL 3875–4]

Premanufacture Notices; Monthly Status Report for NOVEMBER 1990

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for NOVEMBER 1990.

Nonconfidential portions of the PMNs and exemption request may be seen in the TSCA Public Docket Office NE–G004 at the address below between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

ADDRESSES: Written comments, identified with the document control number '(OPTS–53137)' and the specific PMN and exemption request number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Rm L–100, Washington, DC 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm EB–44, 401 M St., SW., Washington, DC 20460 (202) 382–3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during NOVEMBER; (b) PMNs received previously and still under review at the end of NOVEMBER; (c) PMNs for which the notice review period has ended during NOVEMBER; (d) chemical substances for which EPA has received a notice of commencement to manufacture during NOVEMBER; and (e) PMNs for which the review period has been suspended. Therefore, the NOVEMBER 1990 PMN Status Report is being published.

Dated: February 1, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

Premanufacture Notice Monthly Status Report for NOVEMBER 1990.

I. 169 Premanufacture notices and exemption requests received during the month:

PMN No.

P 91–0116	P 91–0126	P 91–0127	P 91–0128
P 91–0129	P 91–0130	P 91–0131	P 91–0132
P 91–0133	P 91–0134	P 91–0135	P 91–0136
P 91–0137	P 91–0138	P 91–0139	P 91–0140

P 91-0141 P 91-0142 P 91-0143 P 91-0144
P 91-0145 P 91-0146 P 91-0147 P 91-0148
P 91-0149 P 91-0150 P 91-0151 P 91-0152
P 91-0153 P 91-0154 P 91-0155 P 91-0156
P 91-0157 P 91-0158 P 91-0159 P 91-0160
P 91-0161 P 91-0162 P 91-0163 P 91-0164
P 91-0165 P 91-0166 P 91-0167 P 91-0168
P 91-0169 P 91-0170 P 91-0171 P 91-0172
P 91-0173 P 91-0174 P 91-0175 P 91-0176
P 91-0177 P 91-0178 P 91-0179 P 91-0180
P 91-0181 P 91-0182 P 91-0183 P 91-0184
P 91-0185 P 91-0186 P 91-0187 P 91-0188
P 91-0189 P 91-0190 P 91-0191 P 91-0192
P 91-0193 P 91-0194 P 91-0195 P 91-0196
P 91-0197 P 91-0198 P 91-0199 P 91-0200
P 91-0201 P 91-0202 P 91-0203 P 91-0204
P 91-0205 P 91-0206 P 91-0207 P 91-0208
P 91-0209 P 91-0210 P 91-0211 P 91-0212
P 91-0213 P 91-0214 P 91-0215 P 91-0216
P 91-0217 P 91-0218 P 91-0219 P 91-0220
P 91-0221 P 91-0222 P 91-0223 P 91-0224
P 91-0225 P 91-0226 P 91-0227 P 91-0228
P 91-0229 P 91-0230 P 91-0231 P 91-0232
P 91-0233 P 91-0234 P 91-0235 P 91-0236
P 91-0237 P 91-0238 P 91-0239 P 91-0242
P 91-0243 P 91-0244 P 91-0245 P 91-0246
P 91-0247 P 91-0248 P 91-0249 P 91-0250
P 91-0251 P 91-0252 P 91-0253 P 91-0254
P 91-0255 P 91-0256 P 91-0257 P 91-0258
P 91-0259 P 91-0260 P 91-0262 P 91-0263
P 91-0264 P 91-0265 P 91-0266 P 91-0267
P 91-0268 P 91-0270 P 91-0271 P 91-0272
P 91-0273 P 91-0274 P 91-0275 P 91-0277
P 91-0278 Y 91-0033 Y 91-0034 Y 91-0035
Y 91-0036 Y 91-0037 Y 91-0038 Y 91-0039
Y 91-0040 Y 91-0041 Y 91-0042 Y 91-0043
Y 91-0044 Y 91-0045 Y 91-0049 Y 91-0050
Y 91-0051 Y 91-0052 Y 91-0053 Y 91-0054Y 91-0055

II. 242 Premanufacture notices received previously and still under review at the end of the month:

PMN No.

P 84-0660 P 85-0433 P 85-0619 P 85-0730
P 86-0501 P 86-1322 P 86-1602 P 86-1607
P 87-0105 P 87-0323 P 87-0723 P 87-1555
P 87-1872 P 87-1881 P 87-1882 P 88-0083
P 88-0217 P 88-0319 P 88-0320 P 88-0353
P 88-0468 P 88-0515 P 88-0576 P 88-0831
P 88-0836 P 88-0918 P 88-1020 P 88-1021
P 88-1035 P 88-1212 P 88-1460 P 88-1473
P 88-1618 P 88-1619 P 88-1622 P 88-1630
P 88-1631 P 88-1632 P 88-1753 P 88-1761
P 88-1783 P 88-1807 P 88-1809 P 88-1811
P 88-1937 P 88-1938 P 88-1980 P 88-1982
P 88-1984 P 88-1985 P 88-1995 P 88-1999
P 88-2000 P 88-2001 P 88-2100 P 88-2169
P 88-2196 P 88-2210 P 88-2212 P 88-2213
P 88-2228 P 88-2229 P 88-2230 P 88-2231
P 88-2236 P 88-2237 P 88-2484 P 88-2518
P 88-2529 P 88-2530 P 88-2568 P 89-0089
P 89-0090 P 89-0091 P 89-0225 P 89-0254
P 89-0321 P 89-0328 P 89-0385 P 89-0386
P 89-0387 P 89-0396 P 89-0538 P 89-0589
P 89-0721 P 89-0764 P 89-0769 P 89-0775
P 89-0776 P 89-0867 P 89-0924 P 89-0942
P 89-0957 P 89-0958 P 89-0959 P 89-0963
P 89-0977 P 89-0978 P 89-0979 P 89-0980
P 89-1010 P 89-1038 P 89-1058 P 89-1062
P 89-1148 P 90-0002 P 90-0009 P 90-0013
P 90-0142 P 90-0158 P 90-0159 P 90-0211
P 90-0220 P 90-0226 P 90-0237 P 90-0248
P 90-0249 P 90-0260 P 90-0261 P 90-0262
P 90-0263 P 90-0319 P 90-0321 P 90-0347
P 90-0360 P 90-0364 P 90-0372 P 90-0384
P 90-0404 P 90-0405 P 90-0406 P 90-0441
P 90-0456 P 90-0489 P 90-0550 P 90-0558
P 90-0559 P 90-0560 P 90-0564 P 90-0581
P 90-0603 P 90-0608 P 90-0643 P 90-0669
P 90-0707 P 90-1280 P 90-1308 P 90-1311
P 90-1318 P 90-1319 P 90-1320 P 90-1321
P 90-1322 P 90-1338 P 90-1353 P 90-1358
P 90-1364 P 90-1366 P 90-1384 P 90-1413
P 90-1422 P 90-1454 P 90-1464 P 90-1472
P 90-1473 P 90-1511 P 90-1527 P 90-1528
P 90-1529 P 90-1530 P 90-1531 P 90-1541
P 90-1555 P 90-1556 P 90-1564 P 90-1592
P 90-1624 P 90-1635 P 90-1636 P 90-1650
P 90-1687 P 90-1718 P 90-1720 P 90-1721
P 90-1722 P 90-1723 P 90-1728 P 90-1730
P 90-1731 P 90-1732 P 90-1745 P 90-1785
P 90-1797 P 90-1809 P 90-1818 P 90-1821
P 90-1825 P 90-1830 P 90-1839 P 90-1840
P 90-1844 P 90-1845 P 90-1846 P 90-1864
P 90-1893 P 90-1937 P 90-1965 P 90-1968
P 90-1969 P 90-1973 P 90-1984 P 90-1985
P 90-2000 P 90-2003 P 91-0004 P 91-0011
P 91-0043 P 91-0051 P 91-0055 P 91-0064
P 91-0065 P 91-0069 P 91-0074 P 91-0075
P 91-0080 P 91-0086 P 91-0087 P 91-0091
P 91-0100 P 91-0101 P 91-0102 P 91-0107
P 91-0108 P 91-0109 P 91-0110 P 91-0111
P 91-0112 P 91-0113 P 91-0114 P 91-0118
P 91-0123 P 91-0124

III. 176 Premanufacture notices and exemption request for which the notice review period has ended during the month. (Expiration of the notice review period does not signify that the chemical has been added to the inventory).

PMN No.

P 88-1620 P 88-1621 P 88-2469 P 88-2473
P 89-1104 P 90-0231 P 90-0333 P 90-0335
P 90-0440 P 90-0480 P 90-0657 P 90-1285
P 90-1337 P 90-1357 P 90-1565 P 90-1642
P 90-1643 P 90-1644 P 90-1645 P 90-1646
P 90-1647 P 90-1648 P 90-1649 P 90-1677
P 90-1759 P 90-1760 P 90-1761 P 90-1762
P 90-1763 P 90-1764 P 90-1765 P 90-1766
P 90-1767 P 90-1768 P 90-1769 P 90-1770
P 90-1771 P 90-1772 P 90-1773 P 90-1774
P 90-1775 P 90-1776 P 90-1777 P 90-1778
P 90-1779 P 90-1780 P 90-1781 P 90-1782
P 90-1783 P 90-1784 P 90-1786 P 90-1787
P 90-1788 P 90-1789 P 90-1790 P 90-1791
P 90-1792 P 90-1793 P 90-1794 P 90-1795
P 90-1796 P 90-1798 P 90-1799 P 90-1800
P 90-1801 P 90-1802 P 90-1803 P 90-1804
P 90-1805 P 90-1806 P 90-1807 P 90-1808
P 90-1810 P 90-1811 P 90-1812 P 90-1813
P 90-1814 P 90-1815 P 90-1816 P 90-1817
P 90-1819 P 90-1820 P 90-1822 P 90-1823
P 90-1824 P 90-1826 P 90-1827 P 90-1828
P 90-1829 P 90-1831 P 90-1832 P 90-1833
P 90-1834 P 90-1835 P 90-1836 P 90-1837
P 90-1838 P 90-1841 P 90-1842 P 90-1843
P 90-1847 P 90-1848 P 90-1849 P 90-1853
P 90-1854 P 90-1855 P 90-1856 P 90-1857
P 90-1859 P 90-1860 P 90-1861 P 90-1863
P 90-1865 P 90-1866 P 90-1867 P 90-1868
P 90-1869 P 90-1870 P 90-1871 P 90-1872
P 90-1873 P 90-1874 P 90-1875 P 90-1876
P 90-1878 P 90-1879 P 90-1880 P 90-1881
P 90-1882 P 90-1883 P 90-1884 P 90-1885
P 90-1886 P 90-1887 P 90-1888 P 90-1889
P 90-1890 P 90-1891 P 90-1892 P 90-1894
P 90-1895 P 90-1896 P 90-1897 P 90-1898
P 90-1899 P 90-1900 P 90-1901 P 90-1902
P 90-1903 P 90-1909 P 90-1918 P 90-1982
Y 90-0292 Y 91-0016 Y 91-0017 Y 91-0018
Y 91-0019 Y 91-0020 Y 91-0021 Y 91-0022
Y 91-0023 Y 91-0024 Y 91-0025 Y 91-0026
Y 91-0027 Y 91-0028 Y 91-0029 Y 91-0030
Y 91-0031 Y 91-0032 Y 91-0033 Y 91-0034
Y 91-0035 Y 91-0036 Y 91-0037 Y 91-0038

IV. 449 Chemical Substances for which EPA has received notices of commencement to manufacture

PMN No.	Identity/Generic Name	Date of Commencement
P 85-0648	G Isopropylidene-bis-(1,1-dimethylpropyl) derivative	October 18, 1990.
P 85-0773	G 4-(Trans-4-n-alkylcyclohexyl)-n-alkoxybenzene	March 15, 1990.
P 85-0775	G 2-Alkoxyphenyl-5-alkyl pyrimidine	October 4, 1990.
P 85-0776	G 5-n-Alkyl-2-(4-n-alkoxyphenyl)-1,3-pyrimidine	October 4, 1990.
P 85-0779	G 5-n-Alkyl-2-(4-n-alkoxyphenyl)-1,3-pyrimidine	October 4, 1990.
P 86-0214	G Functionalized styrene-dvb polymer	April 11, 1988.
P 86-0501	G Aromatic diamine	August 7, 1989.
P 86-0707	G Alkyd resin solution	September 28, 1990.
P 86-1771	G Benzotriazole derivative	August 29, 1988.
P 87-0004	G Bis-(p-ethylbenzylidene) sorbitol	February 1, 1988.
P 87-0571	G Cycloalkenyl substituted alkenone	August 16, 1990.
P 87-1161	G Polyester resin	October 4, 1990.
P 87-1278	G Acrylate acrylonitrile copolymer	October 4, 1990.
P 87-1390	G Benzoate ester of C-20 alcohol	October 9, 1990.
P 88-0218	G Organopolysiloxane containing hydrigen groups	October 4, 1990.
P 88-0251	Fimaric acid; sulfuric acid	September 24, 1990.

IV. 449 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P 88-0340	G Styrenated acrylate methacrylate.	September 21, 1990.
P 88-0831	Phenol, 4,4'-(9H-fluoren-9-ylidene)bis-.	August 27, 1989.
P 88-1460	G 2,5-Dimercapto-1,3,4-thiadiazole reaction product.	January 4, 1990.
P 88-1583	G Long oil alkyd resin; based on mixed fatty acids.	October 11, 1990.
P 88-1602	G Acrylic copolymers emulsion.	March 14, 1989.
P 88-2097	G Aliphatic aromatic polyalcohol ether amine.	August 31, 1990.
P 88-2281	G Polymer of an aromatic diisocyanate, aliphatic diols, a diepoxide and an aliphatic diamine.	October 19, 1990.
P 89-0003	2-(2-(2-Hydroxyethoxy)ethoxy)ethylamine.	September 19, 1990.
P 89-0006	G Substituted ketazine.	October 8, 1989.
P 89-0007	G Substituted phenone.	October 4, 1989.
P 89-0072	G Acid neutralized amine modified epoxy resin.	October 15, 1990.
P 89-0073	G Urethane acrylate.	August 16, 1990.
P 89-0077	G Polyester acrylate.	October 15, 1990.
P 89-0180	G Carboxylic acid, metal salt.	March 22, 1989.
P 89-0192	Aluminum chloride hydroxide sulfate.	March 20, 1989.
P 89-0204	G Aromatic aliphatic polyester.	October 15, 1990.
P 89-0205	G Styrene containing acrylate polymer.	May 1, 1989.
P 89-0268	G Alkyl amine.	November 15, 1989.
P 89-0430	G Blocked aromatic isocyanate.	October 18, 1989.
P 89-0431	G Blocked aromatic isocyanate.	October 18, 1989.
P 89-0432	G Blocked aromatic isocyanate.	October 18, 1989.
P 89-0433	G Blocked aromatic isocyanate.	October 18, 1989.
P 89-0434	G Blocked aromatic isocyanate.	October 18, 1989.
P 89-0435	G Blocked aromatic isocyanate.	October 18, 1989.
P 89-0437	G Blocked aromatic isocyanate.	October 18, 1989.
P 89-0438	G Polymethylene polyphenyl isocyanate.	June 1, 1989.
P 89-0510	G Polyamido polyurea.	May 22, 1990.
P 89-0593	G Reaction product of sodium metabisulfite with polymer of polyalkylene glycol; alkyldiol; and monocyclic dicarboxylic acid, dialkyl ester..	May 29, 1990.
P 89-0695	Triethylene glycol and ammonia.	August 28, 1990.
P 89-0745	G Fatty acids, C-16 substituted dimers, polymers with alkyl diacid,1,2-ethanediamine, 1-piperazine ethaneand polyetherdiamine.	October 22, 1990.
P 89-0825	G Alkylbenzene.	October 16, 1990.
P 89-0879	G Organosilicone copolymer.	October 18, 1990.
P 89-0882	G Partially hydrolyzed alkyl silicate-polyol-siliane polymer.	October 9, 1989.
P 89-0895	G Modified organo siloxane.	October 4, 1990.
P 89-1073	G Diureas.	December 27, 1989.
P 89-1074	G Diureas.	December 27, 1989.
P 90-0048	Random copolymer of 1,3-butadiene with 2-propenenitrile alpha-N-(2-(1-piperazyl)-ethyl) 4-cyano-4-methylbutyramide-omega-2,2-dimethylethane-nitrile..	October 11, 1990.
P 90-0049	Random copolymer of 1,3-butadiene with 2-propenenitrile alpha-N(2-(1-piperazyl)ethyl)4-cyano-4-methylbutyamide-omega-2-methylbutyronitrile..	October 11, 1990.
P 90-0050	Homopolymer of 1,3-butadiene with alpha-(4-cyano-4-methylbutyric acid)-omega-2,2-dimethylethanenitrile.	October 11, 1990.
P 90-0069	G Acrylate acrylic polymer.	October 11, 1990.
P 90-0070	G Modified alkyl acrylate polymer.	October 11, 1990.
P 90-0073	G Aromatic isocyanate-based urethane prepolymer.	May 7, 1990.
P 90-0078	G Phenolate sodium salt.	October 11, 1990.
P 90-0080	G Adduct of styrene/allyl alcohol.	October 11, 1990.
P 90-0081	G Thiadiazole derivative.	October 11, 1990.
P 90-0115	G Halogen-substituted hexahydro pentaalkyl substituted indene.	March 17, 1990.
P 90-0171	G Alkenyl-substituted heterocyclic benzoic acid.	October 16, 1990.
P 90-0191	G Emulsion pentapolymer.	September 27, 1990.
P 90-0292	G Trisocyanurate prepolymer.	August 30, 1990.
P 90-0381	G Polyaromatic resin.	September 9, 1990.
P 90-0412	G Epoxy resin.	June 13, 1990.
P 90-0422	G Polyamide resin.	September 30, 1990.
P 90-0454	G Organopolysiloxane.	October 4, 1990.
P 90-0459	G Reaction product of: tofa glycerine phthalic anhydride, benzoic acid phenolic resin, polyhydric alcohol, aliphatic oil.	September 24, 1990.
P 90-0470	G Rosin, polymer with substituted phenols, formaldehyde, pentaerythritol and metal hydrooxide.	May 19, 1990.
P 90-0514	G Substituted nickel dithiene.	October 1, 1990.
P 90-0549	G Benzoate ester.	October 7, 1990.
P 90-0575	G Groups and hydroxy-terminated polyisocyanate.	August 16, 1990.
P 90-0642	G Halogen substitution-modified methacrylate polymer.	September 27, 1990.
P 90-0658	G Polyacrylate.	September 13, 1990.
P 90-0684	G Salts of acrylic-aromatic polymers.	September 6, 1990.
P 90-0706	G Dialkyl phosphonate, polymers with alkyl alkanolamine, borate	October 9, 1990.
P 90-0718	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0720	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.

IV. 449 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P 90-0721	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0722	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0723	G Acrylic copolymers and salts thereof: styrene/acrylic copolymer and salts thereof.	October 11, 1990.
P 90-0724	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0725	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0726	G Acrylic copolymers and salts thereof: styrene/acrylic copolymer and salts thereof.	October 15, 1990.
P 90-0727	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0728	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0729	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0731	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0732	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0733	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 12, 1990.
P 90-0734	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 12, 1990.
P 90-0735	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0736	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0737	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0738	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0739	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0740	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0741	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0742	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0743	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0744	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0745	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0746	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0747	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0748	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0749	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0751	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0752	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0753	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 12, 1990.
P 90-0754	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0755	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0756	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0757	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0758	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0759	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0760	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0761	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0762	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0763	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0764	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0765	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0766	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0767	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0768	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0769	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0771	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0772	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0773	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0774	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0775	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0776	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0777	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0778	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0779	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0780	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0781	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0782	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0784	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0785	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0786	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0787	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0788	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0789	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0791	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0792	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0794	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0795	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0796	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0861	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0862	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0863	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0864	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0865	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0866	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0867	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0868	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0869	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.

IV. 449 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P 90-0870	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0871	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0872	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0873	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0874	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0875	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0877	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0878	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0879	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0880	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0881	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0882	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0883	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0884	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0885	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0886	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0887	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0888	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0890	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0891	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0892	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0937	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0938	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0939	G Acrylic copolymers and salts thereof: Styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0940	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0941	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0942	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0943	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0944	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0946	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0947	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0948	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0950	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0951	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0952	G Water dispersible polyurethane.	October 10, 1990.
P 90-0953	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0954	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0955	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0956	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0957	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0958	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0959	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0960	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0961	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0962	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0963	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0964	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0966	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0967	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0968	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 12, 1990.
P 90-0969	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 12, 1990.
P 90-0970	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0971	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0972	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0973	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0974	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0975	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0976	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0978	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0979	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0980	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0981	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-0982	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 12, 1990.
P 90-0983	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0984	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0985	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0986	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0987	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0989	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0991	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 12, 1990.
P 90-0992	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0993	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0994	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0995	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0996	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0997	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0998	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0999	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1001	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.

IV. 449 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P 90-1002	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1003	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1004	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1005	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 12, 1990.
P 90-1006	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1007	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1008	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1009	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1010	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1012	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1013	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1014	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 12, 1990.
P 90-1015	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1016	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1017	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1018	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1019	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1020	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1021	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1022	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1023	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1024	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1025	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1026	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1027	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1028	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 12, 1990.
P 90-1029	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1030	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1031	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1032	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1033	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1035	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1036	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1037	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1038	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 12, 1990.
P 90-1039	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1040	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1041	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1042	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1043	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1044	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1045	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1046	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1047	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1048	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1049	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1050	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1051	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 12, 1990.
P 90-1052	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1053	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1054	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1055	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1056	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1058	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1060	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 12, 1990.
P 90-1061	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1062	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1063	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1064	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1065	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1067	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1068	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1069	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1070	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1071	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1072	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1073	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1074	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 12, 1990.
P 90-1075	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1076	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1077	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1078	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1079	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1081	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1082	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1083	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 12, 1990.
P 90-1084	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1085	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1086	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.

IV. 449 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P 90-1133	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1134	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1135	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1136	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1137	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1138	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1139	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1140	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1141	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1142	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1143	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 12, 1990.
P 90-1144	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1145	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1146	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1147	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1148	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1150	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1151	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1152	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 12, 1990.
P 90-1153	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1154	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1155	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1180	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1181	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1182	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1183	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1184	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1185	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1186	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1187	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1188	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1189	G Acrylic copolymers and salts thereof: styrene/acrylic copolymer and salts thereof.	October 12, 1990.
P 90-1192	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1197	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts theroef.	October 11, 1990.
P 90-1198	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 12, 1990.
P 90-1277	G Disubstituted aliphatic-terminated silicone	September 4, 1990.
P 90-1312	G Rosin ester.	September 19, 1990.
P 90-1324	G Urethane modified tall oil fatty acid alkyd.	August 11, 1990.
P 90-1330	G Black polymer of alkane diacid with alkane diamines, polysubstituted cycloalkanes and alkanes diols.	September 14, 1990.
P 90-1365	Polymer of: trimelatic anhydride, diethylene glycol, phthalic anhydride, dimethylol propionic acid, iso-phthalic acid, dimethyl amino ethanel, dimethylol cyclohexane, diethanol amine, morpholine, ammonia, methyl amino propanol, pentaerythritol, trimethylol propane, malic acid..	August 20, 1990.
P 90-1378	G Ziegler catalyst precursor.	September 27, 1990.
P 90-1381	G Polynuclear polyhydroxy phenol.	October 1, 1990.
P 90-1385	G Substituted ethylene copolymer.	September 10, 1990.
P 90-1389	G Aromatic polyimide.	August 27, 1990.
P 90-1396	G Stryene-acrylate-methacrylate copolymer.	August 31, 1990.
P 90-1397	G Dialkylamine hydrohalide.	August 24, 1990.
P 90-1398	2-(2,4-bis(1,1-dimethylpropyl)phenoxy)-N-(4-(4,5-dihydro-5-oxo-3-(1-pyrrolidinyl)-1H-pyrazol-1-yl)phenyl)phenyl)butanamide monohydrochloride..	August 28, 1990.
P 90-1401	G Polyether benzamide.	October 22, 1990.
P 90-1420	G Substituted melamine polymer.	September 4, 1990.
P 90-1427	G Hydroxy functional acrylic polymer.	September 19, 1990.
P 90-1434	G Hydroxy functional acrylic resin.	September 12, 1990.
P 90-1466	G Aqueous polyurethane dispersion.	October 13, 1990.
P 90-1468	G Dialkyl substituted heterocyclic aromatic compound.	October 2, 1990.
P 90-1471	Fatty acids, C14-18, C16-22 unsaturated, esters with 2-octyl-1-dodecanol	September 25, 1990.
P 90-1480	G Perfluoroalkoxy polymer	October 12, 1990.
P 90-1502	G Metalized sulfophenyl azo oxy phenyl azo benzoate, sodium salt	October 10, 1990.
P 90-1505	G Metalized disulfophenyl azo (substituted) naphthalene; triazine.	October 10, 1990.
P 90-1506	G Copper phthalocyanine sulfonyl sulfo derivative, sodium salt.	October 10, 1990.
P 90-1507	G Pyrozolic acid ethene diyl bis sulfo phenylene chloro triazine sulf phinyl azo substituted sulfo phenylene azo bis substituted sulfo phenyl, sodium salt..	October 10, 1990.
P 90-1549	G Salt of an acylated polyamine.	October 4, 1990.
P 90-1550	G Salt of an acylated polyamine.	October 4, 1990.
P 90-1553	G Benzothiophenone derivative.	October 4, 1990.
P 90-1554	G Substituted benzensulfonamide.	October 22, 1990.
P 90-1557	G Substituted alkyl sulfonic acid derivative.	October 3, 1990.
P 90-1562	G Styrenated hydroxy functional acrylic.	October 1, 1990.
P 90-1581	G Alkoxylated aromatic amine.	October 23, 1990.

IV. 449 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P 90-1589	G Polyoxyalkyl aromatic amine.	October 11, 1990.
P 90-1593	G Hydroxylated functional styrene, acrylate and methacrylate polymer.	October 5, 1990.
P 90-1621	G Fatty acid ester.	October 16, 1990.
Y 89-0072	G Chain terminated alkyd resin.	May 15, 1989.
Y 89-0144	G Modified polypropylene.	September 6, 1990.
Y 89-0157	G Polyester polyurethane methacrylate graft copolymer.	August 6, 1990.
Y 89-0178	G Aqueous acrylic copolymer and aqueous acrylic copolymer salts.	October 12, 1990.
Y 89-0179	G Aqueous acrylic copolymer and aqueous acrylic copolymer salts.	October 12, 1990.
Y 89-0181	G Aqueous acrylic copolymer and aqueous acrylic copolymer salts.	October 10, 1990.
Y 89-0182	G Aqueous Acrylic copolymer and aqueous acrylic copolymer salts.	October 10, 1990.
Y 89-0183	G Aqueous acrylic copolymer and aqueous acrylic copolymer salts.	October 10, 1990.
Y 89-0184	G Aqueous acrylic copolymer and aqueous acrylic copolymer salts.	October 11, 1990.
Y 89-0185	G Aqueous acrylic copolymer and aqueous acrylic copolymer salts.	October 10, 1990.
Y 89-0186	G Aqueous acrylic copolymer and aqueous acrylic copolymer salts.	October 11, 1990.
Y 89-0187	G Aqueous acrylic copolymer and aqueous acrylic copolymer salts.	October 11, 1990.
Y 89-0189	G Acrylic copolymer and salts thereof.	October 10, 1990.
Y 89-0190	G Acrylic copolymer and salts thereof.	October 12, 1990.
Y 89-0191	G Acrylic copolymer and salts thereof.	October 12, 1990.
Y 89-0193	G Acrylic copolymer and salts thereof.	October 10, 1990.
Y 89-0194	G Acrylic copolymer and salts thereof.	October 10, 1990.
Y 89-0195	G Acrylic copolymer and salts thereof.	October 10, 1990.
Y 89-0196	G Acrylic copolymer and salts thereof.	October 11, 1990.
Y 89-0197	G Acrylic copolymer and salts thereof.	October 10, 1990.
Y 89-0198	G Acrylic copolymer and salts thereof.	October 11, 1990.
Y 89-0199	G Acrylic copolymer and salts thereof.	October 11, 1990.
Y 89-0202	G Acrylic copolymer and salts thereof.	October 12, 1990.
Y 89-0203	G Acrylic copolymer and salts thereof.	October 12, 1990.
Y 89-0204	G Acrylic copolymer and salts thereof.	October 15, 1990.
Y 89-0206	G Acrylic copolymer and salts thereof.	October 10, 1990.
Y 89-0207	G Acrylic copolymer and salts thereof.	October 10, 1990.
Y 89-0208	G Acrylic copolymer and salts thereof.	October 10, 1990.
Y 89-0209	G Acrylic copolymer and salts thereof.	October 10, 1990.
Y 89-0210	G Acrylic copolymer and salts thereof.	October 11, 1990.
Y 89-0212	G Acrylic copolymer and salts thereof.	October 11, 1990.
Y 89-0213	G Acrylic copolymer and salts thereof.	October 11, 1990.
Y 90-0042	G Aqueous acrylic copolymer and its salts.	October 12, 1990.
Y 90-0043	G Aqueous acrylic copolymer and its salts.	October 12, 1990.
Y 90-0045	G Aqueous acrylic copolymer and its salts.	October 10, 1990.
Y 90-0046	G Aqueous acrylic copolymer and its salts.	October 10, 1990.
Y 90-0047	G Aqueous acrylic copolymer and its salts.	October 10, 1990.
Y 90-0049	G Aqueous acrylic copolymer and its salts.	October 11, 1990.
Y 90-0050	G Aqueous acrylic copolymer and its salts.	October 11, 1990.
Y 90-0051	G Aqueous acrylic copolymer and its salts.	October 10, 1990.
Y 90-0056	G Siloxanes and silicones, methyl alkyl.	September 1, 1990.
Y 90-0058	G Aqueous acrylic copolymer and salts thereof.	October 12, 1990.
Y 90-0066	G Aqueous acrylic copolymer and salts thereof.	October 10, 1990.
Y 90-0067	G Aqueous acrylic copolmer and salts thereof.	October 10, 1990.
Y 90-0068	G Aqueous acrylic copolymer and salts thereof.	October 10, 1990.
Y 90-0069	G Aqueous acrylic copolymer and salts thereof.	October 11, 1990.
Y 90-0070	G Aqueous acrylic copolymer and salts thereof.	October 11, 1990.
Y 90-0072	G Aqueous acrylic copolymer and salts thereof.	October 15, 1990.
Y 90-0073	G Aqueous acrylic copolymer and salts thereof.	October 15, 1990.
Y 90-0075	G Aqueous acrylic copolymer and salts thereof.	October 10, 1990.
Y 90-0079	G Aqueous acrylic copolymer and salts thereof.	October 11, 1990.
Y 90-0081	G Aqueous acrylic copolymer and salts thereof.	October 11, 1990
Y 90-0082	G Aqueous acrylic copolymer and salts thereof.	October 10, 1990
Y 90-0083	G Aqueous acrylic copolymer and salts thereof.	October 12, 1990.
Y 90-0182	G Tall oil fatty acid modified alkyd.	April 25, 1990.
Y 90-0192	G Polyalkylarylether.	May 2, 1990.
Y 90-0205	G Polyester.	October 15, 1990
Y 90-0220	G Hydroxyalkylsiloxane.	September 17, 1990.
Y 90-0221	G Hydroxyalkylsiloxane.	September 17, 1990.
Y 90-0222	G Hydroxyalkylsiloxane.	September 17, 1990.
Y 90-0253	G Modified ethylene-vinyl acetate copolymer.	September 12, 1990.
Y 90-0263	Halogenates styrene isoprene/butadiene block copolymer.	September 18, 1990.
Y 90-0281	G Alkyd resin.	September 20, 1990.

V. 19 Premanufacture notices for which the period has been suspended.

PMN No.

P 90–0594 P 90–1454 P 90–1464 P 90–1787
P 90–1797 P 90–1809 P 90–1818 P 90–1821
P 90–1830 P 90–1839 P 90–1840 P 90–1844
P 90–1845 P 90–1848 P 90–1862 P 90–1864
P 90–1877 P 90–1893 P 91–0077

[FR Doc. 91–2968 Filed 2–6–91; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

January 31, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0108.

Title: Emergency Broadcast System (EBS) Activation Report.

Form Number: FCC Form 201.

Action: Extension.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 500 responses, 084 hours average burden per response, 42 hours total annual burden.

Needs and Uses: The FCC Form 201 was developed as part of the EBS planning program. The program is a three agency agreement between the FCC, the NOAA National Weather Service, and the Federal Emergency Management Agency (FEMA). The form allows the three agencies to assess the success of the program and pinpoint the areas of the country that need further assistance in developing their local EBS.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–2927 Filed 2–6–91; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–891–DR]

Indiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Indiana (FEMA–891–DR), dated January 5, 1991, and related determinations.

DATED: January 29, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washignton, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Indiana, dated January 5, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 5, 1991:

The counties of Grant, Jefferson, Martin, Steuben, Sullivan, and Vanderburgh for Public Assistance (previously designated for Individual Assistance); and

The counties of Benton, Jennings, LaPorte, Perry, and Wells for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–2945 Filed 2–6–91; 8:45 am]

BILLING CODE 6718–02–M

Indiana; Amendment to Notice of a Major Disaster Declaration

[FEMA–891–DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Indiana (FEMA–891–DR), dated January 5, 1991, and related determinations.

DATED: January 31, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Indiana, dated January 5, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 5, 1991:

Madison County for Public Assistance (previously designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–2946 Filed 2–6–91; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. the requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200416–002.

Title: Georgia Ports Authority/ Jugolinija Terminal Agreement.

Parties: Georgia Ports Authority, Jugolinija.

Synopsis: The Agreement amends the schedule of rates for certain terminal services provided under the basic agreement.

By Order of The Federal Maritime Commission.

Dated: February 1, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–2870 Filed 2–6–91; 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:

California Cruise Lines, Inc., SeaEscape Cruises Limited and Stena Cruise Line AB, 7676 Hazard Center Drive, 5th Floor, San Diego, CA 92108.

Vessel: Pride of San Diego

Dated: February 1, 1991.

Joseph C. Polking,

Secretary

[FR Doc. 91–2872 Filed 2–6–91; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Expedite, Incorporated, 16542 Air Center Blvd., Houston, TX 77032, Officers: Richard S. Barfield, President/Director, Mark L. Barfield, Vice President, Christopher Stephen Westell, Vice President, David H. Barfield, Secretary

La Favorita Moving & Shipping, 161 W. Cecil B. Moore Ave., Philadelphia, PA 19122, Eliezer Garcia, Sole Proprietor

Kosmo International, Inc., 2050 Center Ave., suite 310, Fort Lee, NJ 07024, Officers: Moo W. Park, President, Samuel Hong, Secretary, Sam K. Ma, Director

Seabridge International, 4710 Meise Drive, Baltimore, MD 21206, Ronald J. Albi, Sole Proprietor

Mondial Forwarding, Inc., 2361 S.W. 17th Terrace, Miami, FL 33145, Officers: Joaquin A. Armengol, President/Director/Stockholder, Jose M. Armengol, Vice President/Secretary

Cortez Customhouse Brokerage Company, 4950 West Dickman Rd., Battle Creek, MI 49015, Officers: Harold J. Henderson, President, David P. Taylor, Vice President/Secretary, Margaret B. Henderson, Director, Mary Ann Crete, Director

Rose International Inc. dba Rose Maritime Container-Line, 80 River Street, Hoboken, NJ 07030, Officers: Martin F. Koenig, President, Sascha Eske, Vice President

Dated: February 1, 1991.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–2871 Filed 2–6–91; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Hospital Infection Control Practices Advisory Committee; Establishment

ACTION: Notice of establishment—Hospital Infection Control Practices Advisory Committee.

Pursuant to Federal Advisory Committee Act, 5 U.S.C. Appendix 2, the Centers for Disease Control (CDC) announces the establishment by the Secretary of Health and Human Services, on January 19, 1991, of the following Federal advisory committee:

DESIGNATION: Hospital Infection Control Practices Advisory Committee.

PURPOSE: This committee will provide advice and guidance to the Director, CDC, and the Director, Center for Infectious Diseases, regarding the practice of hospital infection control and strategies for surveillance, prevention, and control of nosocomial infections in U.S. hospitals.

Authority for this committee will expire January 19, 1993, unless the Secretary of Health and Human Services, with the concurrence of the Committee Management Secretariat, General Services Administration, formally determines that continuance is in the public interest.

Dated: February 1, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91–2892 Filed 2–6–91; 8:45 am]

BILLING CODE 4160–18–M

National Cholesterol Reference Method Laboratory Network's Program for Cholesterol Testing; Meetings

The following meeting will be convened by the Center for Environmental Health and Injury Control (CEHIC) of the Centers for Disease Control (CDC) and will be open to the public for observation, participation, and comment, limited only by the space available.

NAME: Current status of the National Cholesterol Reference Method Laboratory Network's program for standardizing compact analysis systems for cholesterol testing.

TIME AND DATE: 8:30 a.m.–4:30 p.m., Monday, February 11, 1991.

PLACE: Terrace Garden Inn, 3405 Lenox Road, NE., Atlanta, Georgia 30326.

MATTERS TO BE DISCUSSED: The meeting will provide a forum for the National Cholesterol Reference Method Laboratory Network Directors, manufacturers, and professional organizations, and government agencies to discuss specific issues concerning standardization of compact analysis systems used in the measurement of blood cholesterol.

Presentations and discussions during the meeting will focus on (a) the National Cholesterol Education Program's criteria for adequate performance of cholesterol testing systems, (b) capillary versus venous blood sample difference, (c) specific aspects of cholesterol testing which need to be improved, and (d) the appropriate mechanisms for the standardization of cholesterol testing.

CONTACT PERSON FOR FURTHER INFORMATION: Gary L. Myers, Ph.D., Chief, Clinical Chemistry Standardization Activity (F25), Division of Environmental Health Laboratory Sciences, CEHIC, CDC, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/488–4126 or FTS 236–4126.

Dated: February 1, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91–2893 Filed 2–6–91; 8:45 am]

BILLING CODE 4160–18–M

Immunization Practices Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following Committee meeting:

Name: Immunization Practices Advisory Committee.

Time and Date: 8:30 a.m.—5:30 p.m., February 26, 1991; 8 a.m.—1 p.m., February 27, 1991.

Place: Auditorium A, Building 2, CDC 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents.

Matters to be Discussed: The Committee will discuss draft recommendations for statements on DTP, smallpox, influenza and hepatitis; measles; rubella; polio; *Haemophilus influenzae* type b; and will consider other matters of relevance among the Committee's objectives. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Cheryl Counts, Staff Specialist, CDC (1–B46), 1600 Clifton Road, NE., Mailstop A20, Atlanta, Georgia 30333, telephone 404/639–3851 or FTS 236–3851.

Dated: February 1, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91–2890 Filed 2–6–91; 8:45 am]

BILLING CODE 4160–18–M

Injury Among a Cohort of Electrical Line Mechanics; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) announces the following meeting.

Name: Injury Among a Cohort of Electrical Line Mechanics.

Time and Date: 1 p.m.—4 p.m., March 6, 1991.

Place: Appalachian Laboratory for Occupational Safety and Health, room 203, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505–2888.

Status: Open to the public, limited only by the space available.

Purpose: To review the project entitled, "Injury Among a Cohort of Electrical Line Mechanics." Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Contact Person for Additional Information: Kimberly P. Groves, Secretary, Division of Safety Research, NIOSH, CDC, 944 Chestnut Ridge Road, Mailstop S–110, Morgantown, West Virginia 26505–2888, telephone 304/291–4574 or FTS 923–4574.

Dated: February 1, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91–2891 Filed 2–6–91; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 91N–0037]

Drug Export; Adapin® (Doxepin HCL) Capsules

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Fisons Corp. has filed an application requesting approval for the export of the human drug Adapin® (doxepin HCl) Capsules to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frank R. Fazzari, Division of Drug Labeling Compliance (HFD–313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in Section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Fisons Pharmaceuticals, Jefferson Rd., P.O. Box 1710, Rochester, NY 14603, has filed an application requesting approval for the export of the drug Adapin® (doxepin HCl) Capsules, to Canada. This drug is indicated for use as an antidepressant. The application was received and filed in the Center for Drug Evaluation and Research on December 17, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by February 19, 1991 and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: January 28, 1991.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 91–2895 Filed 2–6–91; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of proposed new routine use for existing system of records.

SUMMARY: One of the top priorities of HHS is to assure high quality and effective health care. HCFA is proposing to revise the system notice for the Medicare Bill File (Statistics), System No. 09–70–0005, by adding a new routine use for release of Medicare Hospital Mortality Information which is derived from data in the Medicare Provider Analysis and Review (MEDPAR) File, and other files available to HCFA. The purpose of this routine use is to allow individuals hospitals to participate in quality of care studies and activities by using data that they have previously supplied to HCFA. This new routine use

will allow release to individual hospitals of patient-specific data including mortality predictors which have been statistically derived.

EFFECTIVE DATES: The proposed new routine use shall take effect without further notice March 11, 1991, unless comments received on or before that date would warrant changes.

ADDRESSES: Please address comments to Mr. Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, room 108, Security Office Park Building, 6325 Security Boulevard, Baltimore, Maryland 21207. We will make comments received available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Mrs. Rose Ellen Connerton, Office of Statistics and Data Management, Bureau of Data Management and Strategy, Health Care Financing Administration, room 3–A–10, Security Office Park Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone (301) 597–3640.

SUPPLEMENTARY INFORMATION: The Medicare Bill File (Statistics), System No. 09–70–0005, contains records on bills for services furnished to persons enrolled in part A (hospital insurance) and/or part B (supplementary medical insurance) of the Medicare program. The system notice for this system was most recently published in the **Federal Register** (54 FR 32482) on August 8, 1989. Data in this system are used primarily for statistical and research purposes related to evaluating the operation and effectiveness of the Medicare program. A principal subfile in the system is the MEDPAR File.

The MEDPAR File contains data from hospital bills of Medicare beneficiaries discharged from hospitals participating in the Medicare program, including data on beneficiary demographics, medical diagnosis and surgery, and utilization of hospital resources. HCFA developed Medicare Hospital Mortality Information as part of the quality of care evaluation process to analyze hospital mortality rates. Prior to the public release of the HCFA hospital mortality analysis, each hospital is sent a list of its patients and the associated variables used by HCFA in the analysis of hospital mortality rates. Comments/explanations from hospitals are then included as part of the public release which contains only summary information overall by treatment category.

After public release of Medicare hospital mortality information, we believe that making patient-specific data on the hospital's own patients (including mortality predictors derived by HCFA) available to the hospital will allow hospitals the opportunity of participating in quality of care studies and objectives. This release is in keeping with our responsibility to assure that high quality of care is provided to Medicare beneficiaries. We are adding a routine use for this purpose.

HCFA will require that a recipient of the Medicare Hospital Mortality Information file meet certain criteria and conditions before the data are released. HCFA will release patient-identifiable data only to the individual hospital which provided the data. To obtain these data, the hospital administrator must make a request in writing on hospital letterhead. There will be a standard charge for these data. (We observe that confidentiality requirements applicable under State law would also apply to the hospital's use of patient-specific information.)

We are proposing that the routine use for release of Medicare Hospital Mortality Information data to the provider becomes routine use number (9) in the system notice for the Medicare Bill File (Statistics), System No. 09–70–0005. It should read as follows:

(9) With respect to the Medicare Hospital Mortality Information file derived from the MEDPAR File, to individual hospitals that have previously supplied to HCFA the patient-identifiable data included in the file. Release of these data to the hospital would include mortality predictors which have been statistically derived by HCFA from data provided by the hospital, national data, and the information on previous hospitalizations in all hospitals. Certain conditions must be met before the data are released:

(a) The data may include information only on patients that the requesting hospital has previously supplied plus the mortality predictors;

(b) The hospital administrator must make a specific request for these data in writing. This request must be on hospital letterhead, must associate the need for these data with the hospital's quality of care activities, and must idicate that the hospital will continue to maintain the confidentiality of the data;

(c) A standard fee must be paid, as determined by HCFA, for these data prior to their release to the hospital.

This proposed new routine use for the MEDPAR File is consistent with the Privacy Act, 5 U.S.C. 552a(a)(7), since, as previously noted, it is compatible with the purpose for which the information is collected. Because this addition of a routine use will not change the purposes for which the information is to be used or otherwise significantly alter the system, we are not preparing a report of altered system of records under 5 U.S.C. 552a(r). We are publishing the notice in its entirety below for the convenience of the reader.

Dated: January 31, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

09–70–0005

SYSTEM NAME:

Medicare Bill file (Statistics) HHS, HCFA, BDMS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

HCFA Data Center, Lyon Building, 7131 Rutherford Road, Baltimore, Maryland 21207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons enrolled in hospital insurance or supplementary medical benefits parts of the Medicare program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Bill data, demographic data on the beneficiary; diagnosis and procedural codes; provider characteristics and identifying number (including physicians).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1875 of the Social Security Act (42 U.S.C. 139511).

PURPOSE OF THE SYSTEM:

To study the operation and effectiveness of the Medicare program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made:

(1) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(2) To the Bureau of Census for use in processing research and statistical data directly related ot the administration of Social Security programs.

(3) To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components;

is party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(4) To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

(a) Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

(b) Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form,

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished;

(c) Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project unless the recipient presents an adequate justification of a research or health nature for retaining such information; and

(3) Makes no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another research project, under these same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit; or

(d) When required by law.

(d) Secures a written statement attesting to the recipient's understanding and willingness to abide by these provisions.

(5) To entities with a legitimate need for data for statistical analyses bearing on Medicare payment policies for inpatient hospital services. Information disclosed for this purpose will not include a beneficiary's health insurance claim number, race, or Medicare status code; the beneficiary's age will be identified only by age intervals; the beneficiary's residence will be identified only to the extent of stating whether he or she resides in the same State as the provider; the admission and discharge dates will be identified only by calendar quarter; and the date of surgery will be identified only as the number of days after admission. Each of the MEDPAR files—short-stay hospital services file, long-term hospital services file, skilled nursing facility services file, and other provider services file—will be modified in accordance with the foregoing provision for release. The entity must agree:

(a) Not to try to identify individual beneficiaries;

(b) Not to disclose raw data to any persons except contractors for data processing and storage (and it must agree to require any such contractor not to release any data and not to retain any data after performing the contract);

(c) Not to link this information to other beneficiary-specific records;

(d) Not to publish or otherwise disclose data in a form raising unacceptable possibilities that beneficiaries could be identified; and

(e) To safeguard the confidentiality of the data and to try to prevent unauthorized access to it.

(6) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

(7) With respect to the QC/MEDPAR File, to entities with a legitimate need for data for the purpose of conducting research or evaluation on the quality and effectiveness of care provided in hospitals. Research or evaluation under this routine use must focus on the improvement of health care or measures for determining, validating, and monitoring the quality and effectivenss of hospital care in such areas as access to care, outcomes of care, and effectiveness of care in improving, restoring, or maintaining the independence and functioning of Medicare beneficiaries. Information disclosed under this routine use will be limited to the data elements described in Appendix A.

The QC/MEDPAR File may be released to an entity if HCFA determines:

a. That the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained.

b. That the purpose for which the disclosure is to be made:

(1) Cannot reasonably be accomplished unless the data are provided in the detailed form described in Appendix A;

(2) Is reasonably likely to be accomplished in view of the capabilities of the requesting entity and other factors; and

(3) Is of sufficient importance to warrant the possible effect on the privacy of the individual that the disclosure of the data might bring.

c. In order for HCFA to determine that the requirements in section (b) are met, the entity must submit and HCFA must approve:

(1) A research or evaluation plan specifying the objectives of the research or evaluation, the manner in which the data will be used, the financial support for the plan, and the date the research or evaluation will be completed. Evaluation plans designed to assist specific providers must be supported by letters of commitment to the evaluation by the providers. Values or differences in values that would trigger provider action must be addressed in the evaluation plan as well as the action the provider intends to take; and

(2) A copy of any report by a panel of recognized experts reviewing the research or evaluation plan (when such review has been performed).

d. The entity and its contractors, if any, must sign a statement acknowledging that section 1106(a) of the Social Security Act, which prohibits the disclosure of confidential information and imposes criminal penalties, may apply. They must also agree to the following:

(1) Not to link the data to other beneficiary-specific records nor to use the data to identify individual beneficiaries;

(2) Not to use the data for purposes that are not related to HCFA-approved research or evaluation of the quality and

effectiveness of hospital inpatient care. Prohibited uses include but are not limited to: marketing (for example, identification and targeting of under or over-served health service markets primarily for the purposes of commercial benefit), insurance (for example, redlining areas deemed to offer bad health insurance or underwriting risks), and adverse selection (for example, identifying patients with high-risk diagnoses). The data must not be made available by the entity or its contractor for an activity not approved by HCFA, even if carried on within the entity or its contractor;

(3) Not to disclose the data to any persons or organizations unless the data are in aggregated form as described in paragraph 5. The data may be disclosed to a contractor for data processing if:

(a) The entity has specified in the research plan submitted to HCFA that the contractor would receive the data for that purpose, or the entity has obtained written authorization from HCFA to make the disclosure to the contractor, and

(b) The contractor has signed a confidentiality statement with HCFA.

(4) Not to publish or otherwise disclose the data in the form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level where no data cells have ten or fewer beneficiaries);

(5) To submit a copy of its plans for any aggregation of the data intended for publication to HCFA for approval prior to publication;

(6) To establish appropriate administrative, technical, procedural and physical safeguards to protect the confidentiality of the data and to prevent unauthorized access to it;

(7) To return all files to HCFA, and destroy any copies that may have been made, at the completion of the research or evaluation plan.

(8) To an agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the State, if HCFA:

(a) Determines that the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained;

(b) Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act;

(c) Determines that the purpose for which the disclosure is to be made:

(1) Cannot reasonably be accomplished unless the data are provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individuals that additional exposure of the record might bring, and;

(3) There is a reasonable probability that the objective for the use would be accomplished; and

(d) Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification for retaining such information;

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another project under the same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would enable project subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit; or

(d) When required by law; and

(4) Secure a written statement attesting to the recipient's understanding of and willingness to abide by these provisions. The recipient must agree to the following:

(a) Not to use the data for purposes that are not related to the evaluation of cost, quality, and effectiveness of care;

(b) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level where no data cells have ten or fewer beneficiaries); and

(c) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication.

(9) With respect to the Medicare Mortality Information file derived from the MEDPAR File and other files available to HCFA, to individual hospitals that have previously supplied to HCFA the patient-identifiable data included in the file. Release of these data to the hospital would include mortality predictors which have been statistically derived by HCFA from data provided by the hospital, national data, and the number of previous hospitalizations in all hospitals. Certain conditions must be met before the data are released:

(a) The data may include information only on patients that the requesting hospital has previously supplied plus the mortality predictors;

(b) The hospital administrator must make a specific request for these data in writing. This request must be on hospital letterhead, must associate the need for these data with the hospital's quality of care activities, and must indicate that the hospital will continue to maintain the confidentiality of the data;

(c) A standard fee must be paid, as determined by HCFA, for these data prior to their release to the hospital.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

All records are stored on magnetic media.

RETRIEVABILITY:

All records are indexed by health insurance claim number and by hospital provider number.

SAFEGUARDS:

For computerized records, safeguards established in accordance with Department standards and National Bureau of Standards guidelines (e.g., security codes) will be used, limiting access to authorized personnel.

RETENTION AND DISPOSAL:

Records are maintained with identifiers as long as needed for program research.

SYSTEM MANAGER AND ADDRESS:

Director, Bureau of Data Management and Strategy, room 1–A–11, Security Office Park, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

For purpose of access, write the systems manager, who will require name of system, health insurance claim number and for verification purposes, name (woman's maiden name, if applicable), social security number, address, date of birth and sex; and to ascertain whether the individual's record is in the system, include utilization and date of utilization under Part A or Part B of Medicare services, home health agency, hospital (inpatient),

hospital (outpatient) or skilled nursing facility.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should also reasonably specify the record contents being sought. (These access procedures are in accordance with the Department Regulations (45 CFR 5b.5(a)(2)

CONTESTING RECORD PROCEDURES:

Contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

Medicare enrollment records: Medicare bill records: Medicare provider records for a sample of persons treated as hospital patients (inpatient and outpatient) and skilled nursing facility patients.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

APPENDIX A.—DATA ELEMENTS CONTAINED IN THE QUALITY OF CARE MEDPAR FILE

Data element	Description	Function
1. Hi Claim Number	Encrypted to protect the identity of the beneficiary	To determine the number of stays for a beneficiary.
2. Day of Admission	1—Sunday	To facilitate analysis of admission patterns.
	2—Monday	
	3—Tuesday	
	4—Wednesday	
	5—Thursday	
	6—Friday	
	7—Saturday	
3. Sex	—male	To measure sex-based differences.
	—female	
	—unknown	
4. Medicare Status Code	Code to show reason for beneficiary's entitlement	To examine effectiveness of care for different categories of Medicare beneficiaries.
	—aged without ESRD	
	—aged with ESRD	
	—disabled without ESRD	
	—disabled with ESRD	
	—ESRD only	
5. Discharge Destination	—To home, self care	To group stays into Diagnois Related Groups (DRGs).
	—To short-term hospital	
	—To SNF	
	—To other type facility	
	—To home health service	
	—Left against medical advice	
	—Died	
	—Still a patient	
6. Medicare Provider Number	Identification number of hospital	To allow for review of care on an institution-specific basis.
7. Date of Admission	Date, plus/minus 1 to 20 days*	To measure intervals between hospital episodes.
8. Date of Discharge	Date, plus/minus 1 to 20 days*	To measure intervals between hospital episodes.
9. Length of Stay	Number of days in hospital stay	To examine days of care.
10. Intensive Care and Coronary Care Days	Days in special care units of hospitals	To measure outcomes in and use of special care units.
11. Total Charges	All charge fields (fields 11–21) are in whole dollars	Charge fields 11–21 are included to measure relative resource use across cases.
12. Routine Accommodation Charges		
13. Intensive Care and Coronary Care Charges		
14. Total Departmental (Ancilliary) Changes		
15. Operating Room Charges		
16. Phamacy Charges		
17. Laboratory Charges		
18. Radiology Charges		
19. Supplies Charges		
20. Anesthesia Charges		
21. Inhalation Therapy Charges		
22. Principal and Other Diagnosis Codes	Five ICD–9–CM Codes	Fields 22–23 are included to identify diagnostic/ surgical information and to group stays into DRGs
23. Surgical Codes	Three ICD–9CM Volume 3 codes	
24. Date of Surgery	Data plus/minus 1 to 20 days*	To measure intervals between admission/discharge and surgery.
25. Blood Furnished	Number of points	To measure outcomes.
26. Diagnosis Related Group	DRG1–DRG475	To define diagnostic groups used in the Prospective Payment System.
27.Date of death	Date, plus/minus 1 to 20 days*	To determine mortality rates.
28. Urban/rural residence	1=ruban	To examine variations in care in urban and rural areas.
	2=rural	
29. Zip-Code	5 digit zip	To exemine variations in care in small areas.
Special Unit Code	S—Psychiatric Unit	Distinguishes PPS-exempt unit records.
	T—Rehabilitation Unit	
	U—Swing-bed Hospital	
	V—Alcohol/Drug Unit Blank	
31. Beneficiary State of Residence	Two-position SSA numeric code	To facilitate seasonal migration studies.
32. Source of Admission..	Admission Type 1, 2, or 3:	To allow analysis of admissions and episodes of care.

APPENDIX A.—DATA ELEMENTS CONTAINED IN THE QUALITY OF CARE MEDPAR FILE—Continued

Data element	Description	Function
	1—Physician Referral 2—Clinic Referral 3—HMO Referral 4—Transfer from Hospital 5—Transfer from SNF 6—Transfer from Another Health Care Facility 7—Emergency Room 8—Court/Law Enforcement 9—Unknown Admission Type 4: 1—Normal Delivery 2—Premature Delivery 3—Sick Baby 4—Extramural 5—Unknown	
33. Type of Admission	1—Emergency 2—Urgent 3—Elective 4—Newborn 9—Unknown	To allow analysis of admissions and episodes of care.
34. Number of Diagnosis Codes	1 through 5	Enable search of diagnosis fields.
35. Number of Surgical Codes	1 through 3	Enable search of surgical procedures fields.
36. Actual Age	Three-position age of beneficiary based on the date of admission.	To measure age-based differences.

*The same random number will be added to all dates in every discharge record occurring for a beneficiary during the year. The random number will range from ±1 through 20.

[FR Doc. 91 2894 Filed 2–6–91; 8:45 am]
BILLING CODE 4120–03–M

Health Resources and Services Administration

Rural Health Outreach Grant Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Office of Rural Health Policy, Health Resources and Services Administration (HRSA), announces that applications are being accepted for rural health outreach demonstration grants to expand or enhance the availability of essential health services in rural areas. Awards will be made from funds appropriated under Pub. L. 101–517 (HHS Appropriation Act for FY 1991). It is anticipated that approximately $18 million will be available to support the program. The program is authorized under section 301 of the Public Health Service Act. Given the wide range of health care needs in rural areas, this program could address any or all of the Health People 2000 objectives.

DATES: Applications for the program must be received by the close of business on May 8, 1991. Applications must be received by the Grants Mangement Officer at the address shown below.

Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date· or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legible dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be acceptable as proof of timely mailing. Late applications will be returned to the sender.

ADDRESSES: Requests for grant application kits and guidance should be directed to: Gary Houseknecht, Grants Management Officer, Bureau of Health Care Delivery and Assistance, 12100 Parklawn Drive, Rockville, Maryland 20857, (301) 443–0665. The standard application form and general instructions for completing applications (Form PHS–5161–1, OMB #0937–0189) have been approved by the Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to Jake Culp, Associate Director, Office of Rural Health Policy, room 14–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–0835.

SUPPLEMENTARY INFORMATION:

Program Objectives

The purpose of the program is to support projects that demonstrate new and innovative models of outreach and care services in rural areas that lack basic health services. Grants are intended either for the direct provision of health services to rural populations, especially for those who are not currently receiving them, or to enhance access to and utilization of available services.

This program will address the needs of a wide range of special rural population groups, including the elderly, the disabled adolescents, rural minority populations, and pregnant women, mothers and infants. A full range of innovative projects are encouraged.

One area of particular interest are outreach proposals having the potential to reduce high rates of infant mortality and morbidity in some rural areas by increasing the number of high-risk pregnant women living in high-rate areas who receive comprehensive, risk-appropriate prenatal care early in pregnancy; and increasing the number of new mothers and infants who remain in care throughout the full (one-year) postnatal care period.

A central goal of the demonstration program is to develop new and innovative models for more effective integration and coordination of health services in rural areas. It is hoped that some of these models will prove significant to solving rural health problems in States, regions of the country, or throughout the country. For example, high infant mortality rates are of general concern in rural areas throughout the country. In order to better integrate the provision of health services in rural areas the program requires the formation of consortium arrangements amont three or more existing providers of services to carry out the demonstrations. A consortium must be composed of three or more

existing health care providers, or a combination of three or more health care and social service providers. Individual members of a consortium might include such entities as rural health clinics, mental health centers, hospitals, medical group practices, public health departments, social service agencies, health professions schools, community and migrant health centers, etc.

Eligible Applicants

All public and private entities, both nonprofit and for-profit may participate as members of a consortium arrangement as described above. However, a grant award will be made to only one entity in a consortium which must be a nonprofit or public entity located in a non-Metropolitan Statistical Area of the country as defined by the Office of Management and Budget.

Review Consideration

Grant applications will be evaluated on the basis of the following criteria:

(1) The extent to which the application is responsive to the purposes of the outreach program.

(2) The extent to which the applicant has justified and documented the need(s) for the project and developed measurable goals and objectives for meeting the need(s).

(3) The strength of the applicant's plans for administrative and financial management of the project.

(4) The reasonableness of the budget proposed for the project.

(5) The extent to which the proposed project would be capable of replication in rural areas with similar needs and characteristics.

(6) Plans for how the project will be continued after federal grant support is completed.

(7) The level of local commitment and involvement with the project, including the extent of cost participation by the applicant.

(8) The strength of the project evaluation plan.

The HRSA hopes to achieve a wide geographic dispersion of awards. Contingent upon the outcome of the review process, HRSA would make an effort to award grants in as many states as possible.

Other Award Information

Individual grant awards under this notice will be limited to a total dollar amount of $3000 thousand (direct and indirect), although applications for smaller are encouraged. Applicants may propose project periods for up to three years.

Grantees will be required to use at least 85 percent of the total amount awarded for outreach and care services as opposed to administrative costs. Grant funds may not be used for purchase, construction or renovation of real property or to support the delivery of inpatient services.

Executive Order 12372

The Rural Health Outreach Grant Program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intragovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more then one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date. (See part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR part 1000 for a description of the review process and requirements.

(The OMB Catalog of Federal Domestic Assistance number is 93.912.)

Dated: January 30, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91-2851 Filed 2-6-91; 8:45 am]

BILLING COE 4160-15-M

National Institutes of Health

National Center for Research Resources; Meeting of the Biomedical Research Support Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Biomedical Research Support Advisory Committee, National Center for Research Resources (NCRR), National Institutes of Health, March 15, 1991, Building 31C, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on March 15, from 9:30 a.m. to adjournment to discuss program policies and options concerning the Biomedical Research Support Grant Program. Attendance by the public will be limited to space available.

Mr. James J. Doherty, Information Officer, NCRR, Westwood Building, room 10A15, National Institutes of Health, Bethesda, Maryland 20892, 301/496-5545, will provide a summary of the meeting and a roster of the Committee members upon request.

Dr. Bill Bunnag, Executive Secretary, Biomedical Research Support Advisory Committee, 301/496-6743, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program No. 93.337, Biomedical Research Support, National Institutes of Health)

Dated: February 4, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-2969 Filed 2-6-91; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of Blood Diseases and Resources Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, February 25-26, 1991, Building 31C, Conference Room 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. on February 25, to adjournment February 26, to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Fann Harding, Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building Room 5A08, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-1817, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and

Resources Research, National Institutes of Health)

Dated: February 4, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-2970 Filed 2-6-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Environmental Health Sciences; Meeting of Advisory Council on Hazardous Substances Research and Training

Pursuant to Public Law 92-463, notice is hereby given of a meeting to be held in the main auditorium of the Wilbur J. Cohen Building (formerly the HEW North Building) at 330 Independence Avenue, SW., Washington, DC. *Acces to the Cohen Building is controlled for security purposes. Please use the "C" Street entrance between 3rd and 4th Streets.* The meeting is open to the public and is scheduled to begin 8:30 a.m., on Tuesday, February 19 and will adjourn at noon on Wednesday, February 20.

This meeting was originally scheduled for October 25, 1990 but was postponed.

There are three objectives for the meeting in February. First, to brief the Council on progress in the research and training programs implemented since 1986. Second, to present to Council a draft Research Plan to continue promising research and training efforts now underway and to fill information gaps which are not the focus of current research studies. Third, to discuss strategies for pilot and field testing new methods developed by scientist receiving Superfund research grants and to assure that proven new methods are made available to persons and organizations responsible for the management of hazardous substances.

With respect to the second item, the President signed Public Law 101-508, extending the programmatic authorities of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) through September 30, 1994. SARA authorized the various research and training authorities subject to coordination by the Advisory Council. SARA also required that NIEHS draft a plan for the implementation of its Superfund basic research and training program. The Research Plan was reviewed by the Council in its first meeting in August 1987. The latest reauthorization does not specifically require another plan. However, since the original plan described a program of research consistent with the five year life of SARA, NIEHS is drafting a second Research Plan for the three year extension enacted by Congress. A preliminary Research Plan will be presented at the meeting.

Attendance is limited only by space available. For further information, please contact Mr. Daniel C. VanderMeer, Executive Secretary, NIEHS, P.O. Box 12233, Research Triangle Park, NC, 27709 or telephone (919) 541-3484. The government representative for this meeting will be Dr. Anne P. Sassaman.

(Catalog of Federal Domestic Assistance Program No. 13.143. NIEHS Superfund Hazardous Substances Basic Research and Training Program, NIH)

Dated: February 4, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-2971 Filed 2-6-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Establishment and Deletion of Notices of Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to establish two new notices, and delete three notices describing systems of records maintained by the Bureau of Land Managmeent (BLM). One new notice is entitled "Name File System—Interior, LLM-31" and describes the system of records containing a central file for names of all entities transacting business with BLM, and is designed to interface with all Privacy Act Systems in BLM. The names of individuals stored in the Name File System are only those names appearing in existing BLM Privacy Act systems with which it interfaces.

One new notice is entitled "Land & Minerals Authorization Tracking System—Interior, LLM-32" and describes the system of records containing information pertaining to land records, including the names and addresses of claimants and applicants, area descriptions, and payments due as a result of leasing or mineral extraction. This notice combines three previously published system notices, i.e., "Alaska Native Claims—Interior, BLM-5" which was previously published in the **Federal Register** on July 10, 1986 (51 FR 25107); "Land and Resource Case File—Interior, BLM-7" which was previously published in the **Federal Register** on July 10, 1986 (51 FR 25108); and "Recordation of Mining Claims—Interior, BLM-29" which was previously published in the **Federal Register** on July 10, 1986 (51 FR 25112). These three systems are being deleted from the Department's inventory of Privacy Act systems of records notices. The two proposed new systems notices are published in their entirety below.

As required by the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), the Office of Management and Budget, the Senate Committee on Governmental Affairs, and the House Committee on Government Operation have been notified of this action. 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget in its Circular A-130 requires a 60-day period to review such proposal. Therefore, written comments on this proposal can be addressed to the Department Privacy Act Officer, Office of the Secretary (PMI), Room 2242, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240. Comments received within 60 days of publication in the **Federal Register** (April 8, 1991), will be considered. The notice shall be effective as proposed without further publication at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: January 23, 1991.

Oscar W. Mueller, Jr.,

Director, Office of Management Improvement.

LLM-31

SYSTEM NAME:

Name File System—Interior, LLM-31.

SYSTEM LOCATION:

(1) U.S. Department of the Interior, Bureau of Land Management, Service Center, Denver Federal Center, Building 50, Denver, Colorado 80225-0047, (2) field offices listed in Appendix XI.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, companies, partnerships, and governmental agencies transacting business with the Bureau of Land Management relating to lands and minerals programs. Some of the records in the system which pertain to individuals may reflect personal information, however, only the records reflecting personal information are subject to the Privacy Act. The system also contains records concerning corporations and other business entities.

These records are not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information identifying an entity by name and address; category of name (private or individual, corporation, or governmental agency), and a unique computer-assigned number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

43 U.S.C. 1601 (Alaska Native Claims Settlement Act), 43 U.S.C. 1701 (Federal Land Policy and Management Act), and the various statutes as listed in the regulations in chapter II of title 43 of the Code of Federal Regulations.

PURPOSE OF THE SYSTEM

The purpose of the system is to (1) provide a single storage location for a name, thus reducing the amount of information storage required by the interfacing BLM Privacy Act Systems, and (2) eliminate multiple entries of the same name.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF EACH USE:

Disclosure outsdie the Department of the Interior may be made: (1) To appropriate Federal agencies when concurrence or supporting information is required prior to granting or acquiring a right or interest in lands or resources, (2) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled, (3) to disclose pertinent information to appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, regulation, rule, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation, (4) to a member of Congress or a Congressional staff member from the record of an individual in response to an inquiry made at the request of that individual, (5) to the Department of the Treasury to effect payment to Federal, State, and local government agencies, nongovernmental organizations, and individuals, and (6) to a debt collection agency or consumer reporting agency to effect payment for a Federal claim.

DISCLOSURE TO CONSUMER REPORTING AGENIES:

Disclosure may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic.

RETRIEVABILITY:

Indexed by name and name identification number.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51(c) for computerized records.

RETENTION AND DISPOSAL:

Indivdual data elements destroyed when superseded or no longer needed for administrative purposes. See BLM Records Schedule 20, Item 64.

SYSTEM MANAGER(S) AND ADDRESS:

Service Center Director, Bureau of Land Management, U.S. Department of the Interior, Denver Federal Center, Building 50, Denver, Colorado 80225–0047.

NOTIFICATION PROCEDURES:

A written request addressed to the System Manager, or to a field office cited in Appendix XI, is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

To see your record, write to the (1) System Manager, (2) BLM Privacy Act Officer, Headquarters Office, (3) State Office Director(s), or (4) BLM Director, Boise Interagency Fire Center. A request for access must meet the content requirements of 43 CFR 2.63. See Appendix XI for addresses.

CONTESTING RECORD PROCEDURES:

To request corrections in your record, write to the System Manager. A petition for amendment must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Claimants and applicants.

LLM–32

SYSTEM NAME:

Land & Minerals Authorization Tracking System—Interior, LLM–32.

SYSTEM LOCATION:

(1) U.S. Department of the Interior, Bureau of Land Management, Service Center, Denver Federal Center, Building 50, Denver, Colorado 80225–0047, (2) Field offices listed in Appendix XI.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, companies, partnerships, and governmental agencies transacting business with th Bureau of Land Management relating to lands and minerals programs. Some of the records in the system which pertain to individuals may reflect personal information, however, only the records reflecting personal information are subject to the Privacy Act. The system also contains records concerning corporations and other business entities. These records are not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case serial number, type (authority for action), acreage, and status; name and address, percent and type of interest; legal description; actions; and general remarks (supplemental information about the case), e.g., the extent of oil and gas or other mineral holdings in national resource lands, and information on payments due as a result of lease and/or extraction of minerals or oil from the leased lands.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

43 U.S.C. 1601 (Alaska Native Claims Settlement Act), 43 U.S.C. 1701 (Federal Land Policy and Management Act), 42 U.S.C 4601 (Uniform Relocation Assistance and Real Property Acquisition Policies Act) and the various statutes as listed in the regulations in Chapter II of title 43 of the Code of Federal Regulations.

PURPOSE OF THE SYSTEM:

The primary uses of records in the system are to facilitate the (1) processing of claims or application, (2) recordation of adjudicative actions, and (3) indexing of documentation in case files supporting adminstrative actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Disclosure outside the Department of the Interior may be made: (1) To appropriate Federal agencies when concurrence or supporting information is required prior to granting or acquiring a right or interest in lands or resources, (2) to Federal, State, or local agencies or a member of the general public in response to a specific request for

pertinent information, (3) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled, (4) to disclose pertinent information to appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, regulation, rule, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation, (5) to a member of Congress or a Congressional staff member from the record of an individual in response to an inquiry made at the request of that individual, (6) to the Department of the Treasury to effect payment to Federal, State, and local government agencies, nongovernmental organizations, and individuals.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic and manual records.

RETRIEVABILITY:

Indexed by name and a name identification number.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51(c) for computerized records.

RETENTION AND DISPOSAL:

Individual data elements destroyed when superseded or no longer needed for administrative purposes. See BLM Records Schedule 20, Item 64.

SYSTEM MANAGER(S) AND ADDRESS:

Service Center Director, Bureau of Land Management, U.S. Department of the Interior, Denver Federal Center, Building 50, Denver, Colorado 80225–0047.

NOTIFICATION PROCEDURES:

A written request addressed to the System Manager, or to the offices cited in Appendix XI, is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

To see your record, write to the (1) System Manager, (2) BLM Privacy Act Officer, Headquarters Office, (3) State Office Director, or (4) BLM Director, Boise Interagency Fire Center. A request for access must meet the content requirements of 43 CFR 2.63. See Appendix XI for addresses.

CONTESTING RECORD PROCEDURES:

To request corrections in your record, write to the System Manager. A petition for amendment must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Claimants and applicants.

[FR Doc. 91–2906 Filed 2–6–91; 8:45 am]

BILLING CODE 4310–84–M

Privacy Act of 1974—Revision and Update of Systems of Records

This notice updates and revises the information which the Department of the Interior has published describing system of records maintained by the Bureau of Land Management (BLM) which are subject to the requirements of the Privacy Act of 1974, as amended, (5 U.S.C. 552a). As noted below, all changes being published are editorial in nature, and reflect organization changes which have occurred since the previous publication of the material in the **Federal Register**.

Part XI of the Appendix to the compilation of the Department's systems of records notices contains the addresses of BLM facilities which are referenced in various systems notices. Part XI, which was last published in the **Federal Register** on July 10, 1986 (51 FR 25112), is revised, updated, and published below.

Since these changes do not involve any new or intended use of the information in the Department's systems of records, the revisions, shall be effective February 7, 1991.

Additional information regarding these revisions may be obtained from the Privacy Act Officer, Bureau of Land Management, U.S. Department of the Interior, 1725 "I" Street, NW., m.s. 208, Washington, DC 20006.

Dated: January 23, 1991.

Oscar W. Mueller, Jr.,

Director Office of Management Improvement.

XI. BUREAU OF LAND MANAGEMENT

A. Headquarters Office: Department of the Interior, Bureau of Land Management 1849 C Street, NW., Washington, DC 20240

B. Filed Offices (Add Bureau of Land Management, U.S. Department of the Interior, to all addresses):

Service Center, Building 50, Denver Federal Center, P.O. Box 25047, Denver, CO 80225.

Alaska State Office (Area of administration: Alaska), 222 W. 7th Avenue No. 13, Anchorage, AK 99513.

Arizona State Office (Area of administration: Arizona), 3707 North 7th Street, P.O. Box 16563, Pheonix, AZ 85011.

California State Office (Area of administration: California), Federal Building, 2800 Cottage Way, E–2841, Sacramento, CA 95825.

Colorado State Office (Area of administration: Colorado), 2850 Youngfield Street, Lakewood, CO 80215.

Idaho State Office (Area of administration: Idaho), 3380 Americana Terrace, Boise, ID 83706.

Montana State Office (Area of administration: Montana, North Dakota, South Dakota), Granite Tower 222 North 32nd Street, P.O. Box 36800, Billings, MT 59107.

Nevada State Office (Area of administration: Nevada), 850 Harvard Way, P.O. Box 12000, Reno, NV 89520.

New Mexico State Office (Area of administration: New Mexico, Kansas, Oklahoma, Texas), Joseph M. Montoya Federal Building, South Federal Place, P.O. Box 1449, Santa Fe, NM 87504.

Oregon State Office (Area of administration: Oregon, Washington), 1300 N.E. 44th Avenue, P.O. Box 2965, Portland, OR 97208.

Utah State Office (Area of administration: Utah), 324 South State Street, P.O. Box 45155, Salt Lake City, UT 84145.

Wyoming State Office (Area of administration: Wyoming, Nebraska), 2515 Warren Avenue, P.O. Box 1828, Cheyenne, WY 82003.

Eastern States Office (Area of administration: All States bordering on and east of the Mississippi River), 350 South Pickett Street, Alexandria, VA 22304.

Boise Interagency Fire Center (Area of administration: National), 3905 Vista Avenue, Boise, ID 83705.

[FR Doc. 91–2907 Filed 2–6–91; 8:45 am]

BILLING CODE 4310–84–M

Bureau of Land Management

[WY–060–91–5101–09–YKKE]

Exxon Wyoming-Dakota Pipeline Segment et al.; Notice of Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Exxon Wyoming-Dakota Pipeline

Segment 2 and Hartzog Draw Unit CO2 Projects Environmental Assessment (EA).

SUMMARY: The Exxon Wyoming-Dakota Pipeline Segment 2 and Hartzog Draw Unit CO2 Projects EA is available for public review. It has been distributed to those who responded to the public scoping notice. Copies of the EA can be obtained by contacting any of the BLM offices identified below. Any comments received will be taken into consideration prior to making a decision whether or not to approve the proposals analyzed in the EA.

DATES: Comments will be accepted until March 1, 1991.

ADDRESSES: Comments should be sent to Mr. Glen Nebeker, Casper BLM Office, 1701 East "E" Street, Casper, Wyoming 82601, Phone: (307) 261–7600.

FOR FURTHER INFORMATION CONTACT: Copies of the EA can be obtained from the office identified above or at the following locations: BLM Wyoming State Office, Fourth Floor Public Room, 2515 Warren Avenue, Cheyenne, Wyoming 82032; Platte River Resource Area, 815 Connie, Mills, Wyoming 82644, Telephone: (307) 216–7500; Buffalo Resource Area, 189 North Cedar, Buffalo, Wyoming 82834, Telephone: (307) 684–5586; or Lander Resource Area, South Highway US 287, Lander, Wyoming 82520, Telephone: (307) 332–7822.

SUPPLEMENTARY INFORMATION: The purpose of the EA is to address the reactivation of Exxon's Bairoil/Dakota CO2 Projects. The entire pipeline project, from MP 26 of the Rangley Pipeline in southwestern Wyoming, to Tioga, North Dakota, has been studied in a DEIS/FEIS and R/W routes were approved in a Record of Decision issued in February 1986. However, only the section from Opal, Wyoming, to Bairoil, Wyoming, was approved for construction by BLM. That portion of the line is now in operation.

Exxon Company, USA, Exxon Pipeline, and numerous other interested parties have submitted an application to BLM to obtain a R/W for construction and operation of a CO2 pipeline from MP–112 near Bairoil, Wyoming to about MP–266, near Sussex, Wyoming, and for constructing ancillary facilities for enhanced oil recovery (EOR) purposes in the Hartzog Draw field. The Hartzog Draw EOR project includes well field facilities, a gas reinjection plant, and possibly a gas separation plant.

The EA analyzed the site-specific and cumulative effects of constructing, operating and maintaining the proposed CO2 pipeline, the Hartzog Draw plants, and all field facilities associated with the proposed CO2 EOR proposal.

Dated: January 28, 1991.

James W. Monroe,

District Manager.

[FR Doc. 91–2858 Filed 2–6–91; 8:45 am]

BILLING CODE 4310–22–M

Albuquerque, NM; District Grazing Advisory Board Meeting

[G–010–4320–12/G1–0104]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Albuquerque District Advisory Board meeting.

SUMMARY: The BLM's Albuquerque District Grazing Advisory Board will meet on Tuesday, March 12, 1991, at 9:30 a.m., in the BLM District Office located at 435 Montano NE. in Albuquerque, New Mexico.

The agenda for the meeting will include:

1. Introduction and Opening Remarks.
2. Election of Officers.
3. Approval of the minutes.
4. Preliminary Review of FY 92 Range Improvement Projects.
5. Water Rights Update.
6. Roles of Industry and the BLM concerning grazing on public lands.
7. Public comment period 11 a.m.
8. Sikes Act Update.

The meeting is open to the public. Anyone interested in attending this meeting to make a presentation must notify the District Manager by March 7, 1991. Written statements may also be filed for the Board's consideration.

Summary minutes of the meeting will be on file in the Albuquerque District Office and available for public inspection during business hours within 30 days of the meeting.

FOR FURTHER INFORMATION CONTACT: Gary Wood, District Range Conservationist, BLM, 435 Montano NE., Albuquerque, New Mexico 87107.

Dated: January 29, 1991.

Patricia E. McLean,

Associate District Manager.

[FR Doc. 91–2859 Filed 2–6–91; 8:45 am]

BILLING CODE 4310–FB–M

Susanville, CA: Grazing Advisory Board Meeting

AGENCY: Interior, Bureau of Land Management, Susanville District Grazing Advisory Board, Susanville, California.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Susanville District Grazing Advisory Board, created under the Secretary of the Interior's discretionary authority on May 14, 1986, will meet on March 7, 1991.

The March 7 meeting will begin at 10 a.m. at the Alturas Resource Area Office, Bureau of Land Management, 608 W. 12th Street, Alturas, California.

Subjects to be covered during the meeting will include a report of progress on range improvements for FY 1991, a report on new and revised Allotment Management Plans (AMPs) for FY 1991, a report on the wild horse and burro program, a discussion of the proposed Black Rock/High Rock Emigrant Trails National Conservation Area, and a discussion of other items as appropriate.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3 p.m. and 4:30 p.m. on March 7, 1991 or file a written statement for the Board's consideraiton. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130 by March 1, 1991. Depending upon the number of persons wishing to make oral statements, a per person time limit may be established.

Summary minutes of the Board meeting will be maintained in the District Office, and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

John Bosworth,

Acting District Manager.

[FR Doc. 91–2860 Filed 2–6–91; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Meeting, Klamath Fishery Management Council

AGENCY: Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 9 a.m. to 5 p.m. on Thursday, February 14, 1991; and from 8 a.m. to 12:30 p.m. on Friday, February 15, 1991.

PLACE: The meeting will be held in the conference room of the Red Lion Inn, 1929 Fourth Street, Eureka, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Inverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1030 South Main), Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639). On February 14, the Council will discuss content of a public review draft of a long-range plan for management of harvest of Klamath anadromous fish stocks. The Council will hear technical reports on 1990 fish harvests, and on numbers of spring and fall chinook salmon expected to be available for harvest in 1991. On February 15, the Council will review, and make recommendations on, plans for 1991 harvest of Klamath stocks of chinnok salmon and other anadromous fish.

Dated: January 28, 1991.

William E. Martin,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–2857 Filed 2–6–91; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[OR–030–01–4320–02: 61–016]

Vale District Multiple-Use Advisory Council; Meeting

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given in accordance with Public Law 92–463 that a meeting of the Vale District Multiple-Use Advisory Council will be held March 6 and 7, 1991.

The agenda of the meeting will include: Overview of the National Historic Oregon Trail Interpretive Center project, Changes in grazing management on public lands if drought conditions persist, Maintenance strategy for range improvement projects, Update on plans and activities related to mineral development at Grassy Mountain, Update on plans and activities in the Trout Creek Mountains, Update on issues related to biodiversity, Update on riparian restoration, and Plans for range and riparian improvement in the Harper Allotment.

The meeting is open to the public. Interested persons may make oral statements to the Council or may file written statements for the Council's consideration. Anyone wishing to make oral statements may do so at 10 a.m. p.s.t. on Thursday, March 7.

Summary minutes of the Council's meeting will be maintained in the district office and will be available for public inspection, or personal copies may be purchased for the cost of duplication, within 30 days of the meeting.

DATES: The meeting will begin at 10 a.m. p.s.t. Wednesday, March 6, 1991, and continue to 12 noon. A field trip to the Oregon Trail Interpretive Center project office and the Flagstaff Hill site will take place from 1:30 to 4:30. The meeting will resume at 8 a.m. on Thursday, March 7, and conclude at 12 noon p.s.t.

ADDRESSES: The meeting will be held in the meeting room of the Kopper Kitchen restaurant, 480 Campbell Street, Baker City, OR 97814.

FOR FURTHER INFORMATION CONTACT: Gerard Hubbard, Bureau of Land Management, Vale District, 100 Oregon Street, Vale, OR 97918 (Telephone 503 473–3144).

Geoffrey Middaugh,

Associate District Manager.

[FR Doc. 91–2908 Filed 2–6–91; 8:45 am]

BILLING CODE 4310–33

[WY–920–41–5700; WYW117184]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Public Law 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW117184 for lands in Johnson County, Wyoming, was timely filed and ws accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW117184 effective September 1, 1990, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 91–2909 Filed 2–6–91; 8:45 am]

BILLING CODE 4310–22–M

[CA–940–01–5410–10–B012; CACA 27774 and CA–940–01–5410–10–B013; CACA 27792]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: The private lands described in this notice, aggregating 18.50 acres, are segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, California State Office, Federal Office Building, 2800 Cottage Way, Room E–2845, Sacramento, California 95825, (916) 978–4820.

Serial Nos. CACA 27774, CACA 27792.

T. 3 S., R. 27 E., Mount Diablo Meridian
Sec. 34, fractional SW¼SE¼.
County—Mono
Minerals Reservation—All coal and other minerals

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the applications shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the applications shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interests: or two years

from the date of publication of this notice, whichever occurs first.

Dated: January 29, 1991.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 91–2910 Filed 2–6–91; 8:45 am]

BILLING CODE 4310–40–M

[AZ–020–91–4410–08]

Kingman Resource Area Resource Management Plan; Extension of Comment Period

AGENCY: Bureau of Land Management, Phoenix District, Kingman Resource Area, Interior.

ACTION: Notice of comment period extension.

SUMMARY: The Kingman Resource Area has extended the public comment period for the draft Kingman Resource Area Resource Management Plan and Environmental Impact Statement from March 8, 1991 to April 13, 1991.

FOR FURTHER INFORMATION CONTACT: Gordon Bentley, Team Leader, 2475 Beverly Avenue, Kingman, Arizona 86401 (Phone (602) 757–3161, FTS 261–0200).

SUPPLEMENTARY INFORMATION: The purpose of the extension of the comment period is to provide for further consultation and cooperation with the affected public land users. Any groups or individuals who are interested in meeting with the planning team should contact Gordon Bentley at the above address before the end of the comment period.

Dated: February 1, 1991.

Henri R. Bisson,

District Manager.

[FR Doc. 91–2911 Filed 2–6–91; 8:45 am]

BILLING CODE 4310–32–M

Geological Survey

Southern California Earthquake Center (SCEC); Restriction of Eligibility for Cooperative Agreement Award

The USGS intends to award cooperative agreement 14–08–0001–A0899 to the University of Southern California for partial support of the SCEC. Initial USGS funding will be $1,850,000.

Project Scope: The SCEC, will serve as the database of southern California geoscientific data. This database will be integrated for the purpose of formulating seismic hazard analysis. Support of the SCEC will meet the goals of the USGS's Earthquake Hazards Reduction Program. Therefore, award of a cooperative agreement for partial support of the SCEC is appropriate.

Further Information: For further information contact Elaine Padovani, U.S. Geological Survey, Geologic Division—MS 905, 12201 Sunrise Valley Drive, Reston, VA 22092. Telephone 703–684–6722.

(Catalog of Federal Domestic Assistance Number 15.807)

Dated: February 1, 1991.

Jack J. Stassi,

Assistant Director for Administration.

[FR Doc. 91–2938 Filed 2–6–91; 8:45 am]

BILLING CODE 4310–31–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development and Economic Cooperation; Notice of Charter Renewal and Revision

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given that the Administrator of the Agency for International Development has determined that renewal and revision of the Charter for the Board for International Food and Development (BIFAD) is necessary and in the public interest. The revised Charter expands the Board's advisory responsibilities to include all aspects of development and changes the Board's name to the Board for International Food and Agricultural Development and Economic Cooperation (BIFADEC).

Dated: January 25, 1991.

C. Stuart Callison,

Acting Executive Director, BIFADEC.

[FR Doc. 91–2856 Filed 2–6–91; 8:45 am]

BILLING CODE 6116–71–M

INTERSTATE COMMERCE COMMISSION

[Service Order No. 1510–A]

D&H Corp.[1] /Canadian Pacific Limited Authorized to Operate Tracks of Delaware and Hudson Railway Co., Debtor (Francis P. Dicello, Trustee); Notice

AGENCY: Interstate Commerce Commission.

ACTION: Service Order No. 1510–A vacates Service Order No. 1510, as amended.

SUMMARY: Service Order No. 1510, as amended, authorized D&H Corp./CP Rail to operate, pursuant to 49 U.S.C. 11123(a) and without Federal subsidy or other Federal compensation, over tracks of the D&H until 11:59 p.m., February 26, 1991. Service Order No. 1510–A hereby vacates Service Order No. 1510, as amended.

EFFECTIVE DATE: This order shall become effective at 11:59 p.m., February 1, 1991.

FOR FURTHER INFORMATION CONTACT: Bernard Gaillard (202) 275–7849, or Melvin F. Clemens, Jr. (202) 275–1559, [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Upon application by Francis P. DiCello, Trustee in reorganization of the D&H, and D&H Corp./CP Rail, Service Order No. 1510 (55 FR 31906) and as amended (55 FR 35962 and 49952), was entered pursuant to 49 U.S.C. 11123(a) and extended until 11:59 p.m., February 26, 1991.

The trustee and D&H Corp./CP Rail, by application of November 23, 1990, had requested that the Commission continue *Service Order No. 1510* in effect until consummation of the transactions approved in *Canadian Pacific Ltd.—Pur. & Trackage.—D&H Ry. Co.*, 7 I.C.C. 2d 95 (1990). On January 18, 1991, attorneys for D&H Corp./CP Rail notified the Commission that the transactions approved by the Commission in the above cited decision had been consummated, that D&H Corp./CP Rail had ceased providing emergency service pursuant to Service Order No. 1510, and that operations had commenced over D&H as part of the CP Rail system.

The Commission herein certifies that the emergency which prompted entry of the original order in this proceeding no longer exists, and that the order may be vacated.

To purchase a copy of the decision, write to, call or pick up a copy in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289–4357/4359.

Decided: January 31, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–2978 Filed 2–6–91; 8:45 am]

BILLING CODE 7035–01–M

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[1] D&H Corporation is a wholly owned subsidiary of Canadian Pacific Limited that was formed to acquire the assets of the Delaware and Hudson Railway Company (D&H). That acquisition was approved by the Commission in *Canadian Pacific Ltd.—Pur. & Trackage.—D&H Ry. Co.*, 7 I.C.C. 2d 95 (1990).

[Finance Docket No. 31821]

CSX Transportation, Inc.—Trackage Rights Exemption—the Monongahela Railway Co.; Notice

The Monongahela Railway Company has agreed to grant overhead trackage rights to CSX Transportation, Inc., between milepost B. Jct 0.0, at or near Brownsville (or a point known as "Brown"), PA, and milepost B. Jct 66.65, at or near Rivesville (or a point known as "Catawba Junction"), WV, a distance of 66.65 miles.[1] The trackage rights were to become effective on January 29, 1991.

This notice is filed under 49 CFR 1180.2(d)(7). 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 stay the transaction. Pleadings must be filed with the Commission and served on: Lawrence H. Richmond, 100 North Charles Street, Baltimore, MD 21202.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: February 1, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-2979 Filed 2-6-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31822]

CSX Transportation, Inc.—Trackage Rights Exemption—the Pittsburgh & Lake Erie Railroad Co.; Exemption

The Pittsburgh & Lake Erie Railroad Company has agreed to grant overhead trackage rights to CSX Transportation, Inc., between milepost 53.9, at or near Brownsville (or a point known as "Brown"), PA, and milepost 15.3, Monongahela Branch Junction, PA, a distance of approximately 38.6 miles.[1] The trackage rights were to become effective on January 29, 1991.

This notice is filed under 49 CFR 1180.2(d)(7). 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 stay the transaction. Pleadings must be filed with the Commission and served on: Lawrence H. Richmend, 100 North Charles Street, Baltimore, MD 21202.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: February 1, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-2980 Filed 2-6-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31653]

St. Lawrence & Raquette River Railroad—Lease and Operation Exemption—Lines in New York; Exemption

The New York & Lake Erie Railroad, through its St. Lawrence & Raquette River Railroad Division (SLRR), has filed a notice of exemption to lease and operate 32 miles of rail line owned by the Ogdensburg Bridge and Port Authority (OBPA) extending: (1) Between milepost 0.0, at Ogdensburg, NY, and milepost 25.2, at Norwood, NY; and (2) between milepost 0.0, at Norwood, and milepost 6.8±, at Raymondville, NY.

This transaction is related to two independently filed petitions for exemption that were granted in Docket No. AB-322 (Sub-No. 1X), *NRUC Corporation—Petition for Exemption—Discontinuance of Service and Operations in St. Lawrence County, NY*; and Docket No. AB-323 (Sub-No. 1X), *Ogdensburg Bridge and Port Authority—Petition for Exemption—Abandonment and Discontinuance of Service between Ogdensburg and Waddington, in St. Lawrence County, NY* (not printed), served January 25, 1991. In that decision, the Commission granted: (1) NRUC Corporation, the current operator on the line, an exemption from the provisions of 49 U.S.C. 10903, *et. seq.*, to discontinue service; and (2) OBPA, the owner of the line, an exemption from the same provisions to abandon the line.

Any comments must be filed with the Commission and served on: Robert O. Dingman, Jr., St. Lawrence & Raquette River Railroad, 50 Commercial Street, Gowanda, NY 14070.

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: February 1, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-2981 Filed 2-6-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31820]

St. Louis Southwestern Railway Company—Trackage Rights Exemption—Burlington Northern Railroad Company

Burlington Northern Railroad Company has agreed to grant overhead trackage rights to St. Louis Southwestern Railway Company (SSW) over a 985-foot connector track at or near Theresa Avenue, St. Louis, MO. The trackage rights will connect SSW's existing trackage rights over lines of Missouri Pacific Railroad Company and Terminal Railroad Association. The trackage rights were to become effective on or as soon as possible after February 7, 1991.[1]

This notice is filed under 49 CFR 1180.2(d)(7). 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 stay the transaction. Pleadings must be filed with the Commission and served on: John MacDonald Smith, St. Louis Southwestern Railway Company, 813 Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: January 31, 1991.

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[1] These trackage rights will connect at or near Brownsville with other trackage rights which are the subject of an exemption in Finance Docket No. 31822.

[1] These trackage rights will connect at or near Brownsville with other trackage rights which are the subject of an exemption in Finance Docket No. 31821.

[1] SSW's original notice was defective due to an inadvertent printing error. The exemption becomes effective 7 days after the January 31, 1991, file date of SSW's amended notice correcting the defect. 49 CFR 1180.4(g)(1).

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–2836 Filed 2–6–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on December 21, 1990 has filed a written notification on behalf of Bellcore and NEC Corporation ("NEC") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties of the venture and (2) the nature and objective of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W Mt. Pleasant Avenue, Livingston, New Jersey 07039.

NEC is a Japanese corporation with a place of business at 7-1 Shiba 5-chome, Minato-ku, Tokyo 108–01, Japan.

On November 8, 1990, Bellcore and NEC entered into an agreement to engage in cooperative and theoretical and experimental studies in high Tc superconductor thin film and prototype thin film device research to better understand the applications of such technology for exchange and exchange access services, including demonstrating feasibility of research concepts by experimental prototypes of such technologies.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–2930 Filed 2–6–91; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—Petrotechnical Open Software Corp.

Notice is hereby given that, on January 14, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Petrotechnical Open Software Corporation ("POSC") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to a joint venture to conduct research and development of an integrated software platform for petroleum exploration and production and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture and its general areas of planned activity are given below:

Voting members

BP Exploration Incorporated, 5151 San Felipe, Houston, TX 77056.

Chevron Corporation, P.O. Box 42832, Houston, TX 77242–2832.

Societe Nationale ELF Aquitaine (Production), 64018 Pau Cedex, France.

Mobil Exploration and Producing Services Incorporated, Technical Computer Center, P.O. Box 650232, Dallas, TX 75265–0232.

Texaco Incorporated, E & P Technology Division, P.O. Box. 770071, Houston, TX 77042–5301.

Non-voting members:

ZEH Graphics Systems, 1325 Dairy Ashford, Suite 295, Houston, TX 77077.

Additional voting members may be added by vote of three-fourths of the existing voting members. Additional non-voting members may be added by the board of directors. The non-voting membership of POSC is open to any corporation or other entity with an interest in petroleum exploration or production. Information regarding participation in the venture may be obtained by contacting POSC.

POSC is a non-profit, non-stock membership corporation organized under the laws of the State of Delaware. The object of POSC is to undertake cooperative research, development, formulation and experimentation concerning an open, integrated software platform for the exploration and production segments of the petroleum industry. POSC will engage in all necessary activities to accomplish this objective including:

1. Conducting research and experimentation to formulate and develop specifications for an open, integrated software platform;

2. Developing and promoting new and relevant standards and participating in the development of industry standards;

3. Conducting research and experimentation to formulate and develop a high level logical common data model;

4. Conducting research and experimentation to formulate and develop test suites to permit vendors to evaluate their offerings against specifications;

5. Certifying that industry offerings are in compliance with specifications;

6. Conducting research and experimentation in order to formulate and develop software offerings consistent with specifications, to the extent required to supplement available industry offerings;

7. Developing and making available software or other proprietary information or technology developed through POSC, including the granting of licenses;

8. Providing technical assistance to end users and software vendors in the implementation and use of the specifications and software offerings developed by POSC;

9. Collecting, exchanging and analyzing research information required to achieve the venture's objective;

10. Establishing an open process for solicitation of inputs for its specifications, test suites and any software oferings;

11. Establishing guidelines for the licensing of technology submitted by an interested party and utilized by POSC in its integrated software platform, test suites or software offerings; and

12. Conducting research and experimentation to formulate and develop methods for the distribution of POSC's software offerings in an encoded form which is not limited to the machine architecture on which it will execute.

The venture became effective November 30, 1990.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–2913 Filed 2–6–91; 8:45 am]

BILLING CODE 4410–01–M

National Institute of Corrections

Advisory Board Meeting

Time and Date: 1 p.m., Sunday, March 3, 1991.

Place: Crystal Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, Virginia.

Status: Open.

Matters to be Considered: The FY 1992 Program Plan, the Corrections Television Network, the NIC/OJJDP Agreement, and a briefing by the Bureau of Justice Statistics on their programs.

Contact Person for More Information: Larry Solomon, Deputy Director, (202) 307–3106.

M. Wayne Huggins,

Director.

[FR Doc. 91–2933 Filed 2–6–91; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Announcement of Proposed Noncompetitive Grant Awards

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of intent to award a noncompetitive grant.

SUMMARY: The Employment and Training Administration (ETA) announces its intent to modify a current grant with the Contact Center, Inc. of Lincoln, Nebraska, for the provision of specialized services under the authority of the Job Training Partnership Act (JTPA).

DATES: It is anticipated that this grant agreement will be executed by February 27, 1991, and will be funded for one year. Submit comments by 4:45 p.m. (Eastern Time), on February 22, 1991.

ADDRESSES: Submit comments regarding this proposed assistance award to: U.S. Department of Labor, Employment and Training Administration, room C–4305, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Charlotte Adams; Reference FR–DAA–002–91.

SUPPLEMENTAL INFORMATION: The Employment and Training Administration (ETA) announces its intent to modify our current grant with the Contact Center, Inc. of Lincoln, Nebraska. The grantee will provide information regarding workforce/workplace issues relating to the Job Training Partnership Act (JTPA) by phone to callers to the Project PLUS system and follow-up with written information where appropriate. Grantee will also inform JTPA Service Delivery Areas (SDAs) of all referrals of Project PLUS callers to their SDAs on a monthly basis. Funds for this activity are authorized by the Job Training Partnership Act, as amended, Title IV—Federally Administered Programs. The proposed funding is approximately $168,000 for a one year period.

Signed at Washington, DC on January 25, 1991.

Robert D. Parker,

ETA Grant Officer.

[FR Doc. 91–2897 Filed 2–6–91; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act (JTPA); Building the Capacity of the JTPA System

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; request for comments.

SUMMARY: Although there is widespread recognition of the success achieved by the Job Training Partnership Act (JTPA) training system, there have been concerns raised from many sources, but most frequently from within the system itself, that there is a need to improve the quality of services and management of the program. The purpose of this notice is to begin a dialogue among all partners within the JTPA system on how best to strengthen that capacity of the system. The initial comment period will be followed by consultations with the principal commenters, Congressional staff and interest groups to arrive at positions, where appropriate, and publish such positions for general comments. In order to stimulate recommendations and reactions, the paper is organized around a set of optional approaches to the three components of capacity-building most frequently identified by State and local program operators as key elements of such a system. They are: (1) Training of JTPA professional staff, (2) an appraisal system which promotes quality in program delivery, and (3) recognition of staff competencies. These options are intended to be illustrative and do not preclude other options from consideration.

DATES: Written comments on this notice are invited. Comments should be submitted on or before March 11, 1991. Following the comment period, the Department will review the comments received, meet and discuss issues with principal commenters, Congressional staff, and interest groups, arrive at positions, where appropriate, and publish such positions for general comment.

ADDRESSES: Written comments shall be mailed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–4703, Washington, DC 20210, Attention: Mr. Hugh S. Davies, Acting Director, Office of Employment and Training Programs. Commenters wishing acknowledgement of receipt of their comments should submit them by certified mail, return receipt requested.

FOR FURTHER INFORMATION CONTACT: Mr. Hugh S. Davies, Acting Director, Office of Employment and Training Programs. Telephone: (202) 535–0580. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The purpose of this notice is to offer a sample of optional ways of strengthening the capacity of the Job Training Partnership Act (JTPA) system and to obtain further options, views and guidance from the JTPA system. The Department of Labor (Department) intends to move forward as the system wishes and therefore is committed to capacity-building as a collaborative process involving State and local officials and other interested parties at each step in the process. The Department also recognizes that several options may not involve the Federal Government. Therefore, next steps and future direction for capacity-building efforts will be based on the JTPA system's response and comments elicited as a result of this Notice. The Department does not intend to proceed with any of the options presented unless and until support is received from the JTPA system. This notice is a first step in a continuing process to determine how capacity-building objectives can be best achieved.

The Department is interested in comments regarding the best overall approach to building the capacity of the JTPA system as well as recommendations with regard to: (1) A National Training Institute, (2) an appraisal system which would foster program excellence, and (3) ways of increasing and recognizing JTPA professional staff competencies. In addition to commenting on the options as presented, commenters are also encouraged to suggest new alternatives. In responding, please indicate how the Department can and should proceed, if at all.

The Department is particularly interested in receiving comments on approaches to capacity-building that have already been successfully implemented within the JTPA community. Such approaches could serve as models for our efforts, and the Department could benefit by buiding upon these successful strategies in developing the capacity-building initiative at the national level.

Background

While JTPA over the past years has been labeled as one of the most successful job training programs ever, the Department has repeatedly heard from many sources that the system must continue to grow in order to be prepared to deal with the upcoming challenges of a changing economy and workforce. Most frequently raised has been the need for: comprehensive training of JTPA staff at all levels; improving the quality of service delivery; and recognition of staff competencies.

The JTPA Advisory Committee made up of leaders from the job training system, the private sector, labor, education and community-based organizations emphasized the need for building the capacity of the JTPA system in its March 1989 report, "Working Capital: JTPA Investments for the 90s." While complimenting the system for its past performance, the report goes on to say:

> The real capacity for better performance in JTPA lies in its service provider organizations and the people who staff them. The job training system, in its various guises, has performed remarkably well since its inception several decades ago, surviving large swings in funding, singificant changes in governing relationships, and substantial shifts in the mix of allowable target population and services. The source of this enduring capacity should be explicitly recognized; every effort should be made to ameliorate the conditions that impede it, and sustained efforts should be provided to ensure that it is nurtured.

The Advisory Committee recommended that the Department, as a leader in the field of training and employment, take a proactive role in building capacity throughout the employment and training system, going as far as to suggest the creation of a new line item for staff training and development in the JTPA appropriation.

Further evidence of the system's interest in and need for comprehensive training is found in a recent study on "JTPA Staffing and Staff Training at the State and SDA Levels," prepared by Berkeley Planning Associates and Macro Systems, Inc. The study indicated consensus about overall training priorities at the State and service delivery area (SDA) levels, as well as priorities specific to staff performing different types of functions. The study revealed considerable interest in training at the State and SDA levels, as well as at the service provider level.

Several key national training and employment organizations echoed these concerns as well in a recent letter to the Department, saying that "it has become increasingly apparent that there is a need for systematic development of a body of knowledge, communications channels, and curricula and training to build the profession and professional practice in the various employment and training programs throughout the nation."

Principles

There are many underlying principles which may be useful in guiding the Department's efforts and apply to all three areas in which options are presented:

1. All of the Department's capacity-building plans will be designed in a collaborative manner with State and local government partners, including the role and involvement of the Federal Government.
2. Program design and delivery are State and local functions. There is no intention for standardization of JTPA programs to occur as a result of any of the capacity-building efforts.
3. Capacity-building efforts should be system-driven, based on the system's self-expressed needs, and built upon what currently exists. That is, capacity-building is intended to have the ownership of the system.
4. Duplication of effort should be avoided and integration of existing effective training programs and techniques currently being operated at Regional, State and local levels encouraged.
5. First priority for training and staff development will be geared to local level staff who comprise the first-line team in serving the target population.

Options

A. For Comprehensive Training of JTPA Staff at All Levels

1. *Continue the System as it is.* Currently, a variety of resources are used at the Federal, State and local levels to provide staff training. Some JTPA Title IV Technical Assistance and Training (TAT) funds are used for national grants with public interest groups and other contractors charged with providing technical assistance and some of the Title IV TAT funds are passed on to the regions for use by regions and States. States also are free to use administrative and some 6% incentive funds for training. Some regions and States have developed their own training. Some regions and States have developed their own training institutes. Others have contracted with local colleges and other service deliverers to provide training. Each locality operates according to its own needs without a centralized mechanism for sharing information among SDAs and States, avoiding duplication of effort and ensuring quality control.

2. Establish a National Training Institute Which Can Operate in One of Several Ways

a. *A centralized, Physical Presence Which Provides Direct Training in All Areas for JTPA Staff at All Levels.* States would send their staffs to the centralized facility for all training.

This option avoids duplication and encourages information sharing, but raises many questions and concerns. Inadequate funds for travel and comprehensiveness of this National approach may adversely affect current State and regional training initiatives and institutes. In addition, a highly centralized institute may be perceived as unresponsive to the needs of local jurisdictions within the JTPA system.

b. *A Central Facility Complemented By a Multiplicity of Field Delivery Capacities.* The central facility would be responsible for setting quality standards for training deliverers and curriculum development, serving as a broker of quality training, developing exportable curriculum packages, and establishing new ways of communcating with the employment and training community. The central facility would provide executive-level training and a limited amount of direct training for other level JTPA staff. The bulk of the training would be done closer to home through use of existing resources in the regions, States and SDAs and the development of new capabilities. The central facility would train the trainers and exercise careful control over off-site training, sanctioning or "franchising" that training meeting its standards.

This option has the advantage of making maximum use of existing effective resources, avoiding duplication and limiting travel costs. On the other hand, some concern may exist that without increased funding, a National effort—even one done in a collaborative fashion—will result in some reduction of local training. In addition, charging the institute with such a multitude of tasks may be too broad to be feasible.

c. *An Organization, Without a "Bricks and Mortar" Headquarters, Providing a Range of Services Which May Include Serving as a Broker of Quality Training, Assessing Existing Curriculum and Preparing Curriculum Packages Based on a Synthesis of Existing and New Materials, Providing Technical Assistance to Existing Training Institutes on Request and Identifying New Ways for the System to Provide Training.* This option allows fewer services to the system but would be less

expensive. Without a direct training function, this option may be perceived as being less "in touch" with the needs of the system.

3. *Establish a National Board of Directors To Oversee a State and Regional Training System*

The Board would establish standards for States/regions to meet in providing effective training and would assist those implementing such training on an as needed basis.

This option retains a degree of autonomy for the States and regions while accommodating a national role for coordination and quality control. There would be some concerns relative to the feasibility of a National Board overseeing so many jurisdictions and to the receptivity of the system to still another set of National standards.

4. *Offer Direct Grants With Technical Assistance and Training Funds to Regions and States: To Bolster Existing Training Institutes; To Create New Ones; and To Develop Replicable Programs and Curricula*

Such a grant program could be operated nationally or each State could be given funds to competitively award to SDAs with innovative training ideas. This option would give recognition to effective deliverers and innovators. On the other hand, this approach might not be as effective in promoting information sharing and precluding duplication of effort.

B. For Improving the Quality of Service Delivery

1. *Continue the System, As Is.* The approach the Employment and Training Administration (ETA) has taken to date to comply with its responsibilities under the JTPA is to put into place a system of performance standards as well as program oversight through a number of different processes. These processes encompass audits, the Department's Office of the Inspector General (OIG) activities, General Accounting Office (GAO) activities, and ETA on-site reviews. It is clear that the current oversight/monitoring system focuses heavily on integrity issues touching only slightly on programmatic and quality concerns. In working with the current approach, ETA might seek to redirect the system to promote quality and results oriented operations.

2. *Establish a Quality Appraisal System.* A system of appraisal which emphasizes quality of operations would be designed by State and SDA representatives working with the Department to be administered by the States. The assessment instrument would be based on models of excellence and list attributes and activities that constitute progressively higher levels of quality against which assessment can occur in each of several critical areas of program planning, administration, client services and outcomes/results. Best practices would be documented and disseminated throughout the system and recognition would be given to excellence through a variety of means.

This approach would not be a pass-fail accreditation type system; rather, the review would assess the current operation, solve problems, propel operations toward increased performance and recognize the best.

States would use a universal instrument to assess quality and if desired, modify the instrument to meet State/local needs. States would also develop an implementation plan. SDAs would do a self assessment using the instrument and be visited by a review team about every third year in order to confirm findings, note excellence, and gain suggestions to resolve operational problems. States would chair the review team composed of a Federal representative and SDA representatives from other areas.

Options in implementing this model: This option assumes Federal involvement in assessment instrument design and participation on an SDA review team. Alternatively, the design of a review instrument could be done under the auspices of an outside organization and team members could be restricted to SDA peers. Also, the process could universally cover SDAs or SDAs could volunteer for the process in order to be recognized or to improve their operations.

The process will require time, commitment and some funds. On the other hand, improved management and operations should result.

3. *Research the Possibility of Establishing Some Type of Accreditation System.* Accreditation is defined as a process whereby an agency or association grants public recognition to a school, college or university, or a specialized study program that meets certain predetermined qualifications or standards. SDAs that meet certain standards could be recognized through an accreditation-type process. This would involve the establishment of an outside Accreditation Board. The Board might establish standards that "accredited" SDAs would meet, develop procedures for a self-study process, train peer reviewers, receive review reports, make judgments on whether an SDA passed the process. SDAs would voluntarily submit to this process.

While the system may like the term "accreditation," the term is normally reserved for educational/training institutions and programs that gain approval from the Council on Post Secondary Accreditation or the U.S. Department of Education.

C. For Increasing the Recognition of Staff Competencies

1. *Retain the Current System.* JTPA and its predecessor programs have been in operation for a number of years. Staff is generally of good quality and turnover varies by type of job and location. At least two associations have been involved in staff development activities, a State is working to establish credentials for professional staff growth and a few universities offer employment and training courses. The area, however, is not a recognized profession or career. The result is that there is not an automatic recruitment source and career progression paths are unknown or lack certainty. On the other hand, the multiplicity of hiring systems are not exclusionary, but are open to a range of individuals and talents.

2. *Establish a Credentials or Certification System by Which a Professional Organization or an Independent External Agency Recognizes the Competencies of Individual Practitioners Within the JTPA System.* The purposes of a certification system are multiple: (a) To ensure a supply of competent staff who are recognized professionals; (b) to establish minimum knowledge, skills and abilities which are necessary to perform specific jobs and to certify those who possess them; (c) to provide a means for professional growth and development; and (d) to develop a self-regulatory system for the profession which includes a set of ethical standard and thereby protects clients and employers from incompetent practitioners.

There are two approaches which the outside professional organization may consider in establishing a certification system:

a. *A Voluntary System Whereby Competencies Required for Jobs Within the JTPA System Are Defined and Training Opportunities are Provided for Staff Needing to Attain These Competencies.* An individual wishing to be certified may at any point be evaluated by his/her peers or, as an alternative, take a test in a given competency areas. This option would serve to provide the tools needed to upgrade the skills of JTPA staff and would not screen present JTPA staff ou of the system or prevent the initiai employment of talented individuals lacking the proper "credentials."

b. *A Mandatory Process Used for Hiring and Promoting Only Those Demonstrating the Identified Competencies.* Such a process would insure a uniformity in selection of JTPA staff. If certain skills are needed for JTPA jobs, then the logic prevails that only persons demonstrating these skills should be hired or promoted. On the other hand, it may preclude the hiring of staff with career growth potential, if given an opportunity for development and subsequent certification.

As mentioned above, the Department does not intend to be involved in the administration of a credentialing process. If requested, the Department could assist an outside credentialing organization in defining the knowledge and competencies for selected occupations and developing training curricula for these competencies. Such activities would be applicable not only to a credentialing process but to the comprehensive staff training options discussed in Option A above.

Conclusion

The Department views capacity-building as a means to increase program integrity and insure higher quality services to the at-risk population. The design and successful implementation of any capacity-building effort is clearly dependent upon acceptance by the JTPA system. Comments, suggestions and reactions to the proposals herein and others are clearly invited.

Signed at Washington, DC, this 31st day of January, 1991.

Robert T. Jones,

Assistant Secretary of Labor.

[FR Doc. 91-2396 Filed 2-6-91; 8:45 am]

BILLING CODE 4510-30-M

Attestations Filed by Facilities Using Nonimmigrant Aliens As Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The addesses of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: *Regarding the attestation process:* Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202-535-0163 (this is not a toll-free number).

Regarding the complaint process: Chief, Farm Labor Programs, Wage and Hour Division. Telephone: 202-523-7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H-1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1182(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted on filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organization can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 1st day of February, 1991.

Robert A. Schaerfl,

Director, United States Employment Service.

DIVISION OF FOREIGN LABOR CERTIFICATIONS

[Approved Attestations Jan. 22, 1991 to Jan. 25, 1991]

CEO-name	Phone	Facility name	State	Approval date
Mr. Ron Kupferstein	213-679-3321	Hawthorne Hospital, 13300 S. Hawthorne Blvd., Hawthorne, CA 90250.	CA	Jan. 24, 1991.
Mr. Joel Bergenfeld	213-201-6616	Century City Hosp., 2070 Century Park East, Los Angeles, CA 90067.	CA	Jan. 25, 1991.
Mr. James D. Hetzer	209-442-6000	Fresno Community Hosp. & Med., Fresno and R Streets, Fresno, CA 93701.	CA	Jan. 25, 1991.
Mr. William J. Riord	203-576-6000	St. Vincent's Med. Ctr., 2800 Main St., Bridgeport, CT 06606.	CT	Jan. 23, 1991.
Mr. Charles O'Brien	202-784-2370	Georgetown University Hospital, 3800 Reservoir Rd., NW, Washington, DC 20007.	DC	Jan. 24, 1991.

DIVISION OF FOREIGN LABOR CERTIFICATIONS—Continued

[Approved Attestations Jan. 22, 1991 to Jan. 25, 1991]

CEO-name	Phone	Facility name	State	Approval date
Mr. Stephen Sutherli	813-521-5073	Humana Hosp., 6000 49th Street, North St. Petersburg, FL 33709.	FL	Jan. 25, 1991.
Mr. Richard J. Stull	305-776-8500	Imperial Point Med. Ctr., 6401 North Federal Hwy., Fort Lauderdale, FL 33308.	FL	Jan. 25, 1991.
Mr. Thomas R. Pentz	305-568-1000	North Beach Hospital, 2835 North Ocean Boulevard, Fort Lauderdale, FL 33308.	FL	Jan. 25, 1991.
Mr. Martin E. Casper	305-944-2361	Greynolds Park Manor, Inc., 17400 West Dixie Highway, North Miami Beach, FL 33160.	FL	Jan. 25, 1991.
Mrs. Margaret Stern	312-973-5333	Buckingham Pavilion, Inc., 2625 W. Touhy Avenue, Chicago, IL 60645.	IL	Jan. 25, 1991.
Mr. Andrew Riddell	617-581-9200	AtlantiCare Medical Center, 500 Lynnfield Street, Lynn, MA 01904.	MA	Jan. 25, 1991.
Mr. Robert B. Smith	314-882-8000	University Hospitals and Clin, One Hospital Drive, Columbia, MO 65212.	MO	Jan. 25, 1991.
Ms. Dolores Turco	201-383-6200	Andover Nursing Center, P.O. Box 1279 Mulford Rd., Andover, NJ 07821.	NJ	Jan. 25, 1991.
Mr. Stephen Savitsky	516-358-1000	Staff Bldrs. Travel Nurse Div., 1981 Marcus, C-115, Lake Success, NY 11042.	NY	Jan. 25, 1991.
Mr. Jack Barto	409-989-5140	St. Mary Hospital, 3600 Gates Blvd., Port Arthur, TX 77642.	TX	Jan. 25, 1991.
Mr. Jolyn West Schel	713-522-5355	JWS Health Consultants, Inc., d/b/a UltraStaff, Houston, TX 7705.	TX	Jan. 25, 1991.
Number of Attestations: 16				

[FR Doc. 91-2898 Filed 2-6-91; 8:45 am]
BILLING CODE 4510-30-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Requests for copies must be received in writing on or before March 25, 1991. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Navy, Bureau of Naval Weapons (N1-402-89-1). Administrative, facilitative, and non-program records created by the Bureau of Naval Weapons 1959-1966. Program, policy, and primary mission records are permanent.

2. Department of Health and Human Services, Alcohol, Drug Abuse and Mental Health Administration (N1-442-90-1). Health and Nutrition Evaluation Survey system input data forms and system design information.

3. Department of Justice, Executive Office for United States Attorneys (N1-118-91-1). Outstanding fugitive warrant cases (significant files are designated for permanent retention).

4. Department of the Treasury, Office of Law Enforcement Coordination (N1-56-91-1). Routine correspondence, administrative surveys and subject reference files regarding Treasury law enforcement activities, ca. 1938-64.

5. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Law Enforcement (N1-436-90-

2). Reduction in retention period for routine administrative records relating to enforcement of alcohol, tobacco and firearms laws.

Dated: January 31, 1991.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 91–2861 Filed 2–6–91; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Expansion Arts Advisory Panel; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Multidisciplinary Arts Organizations Section) to the National Council on the Arts will be held on February 25, 1991 from 9:15 a.m.–6 p.m., February 26–27 from 9 a.m.–6 p.m. and February 28 from 9 a.m.–5:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on February 25 from 9:15 p.m.–10:30 a.m. and February 28 from 3 p.m.–5:30 p.m. The topics will be opening remarks, general program overview and policy discussion.

The remaining portions of this meeting on February 25 from 10:30 a.m.–6 p.m., February 26–27 from 9 a.m.–6 p.m. and February 28 from 9 a.m.–3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of December 11, 1990, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: January 29, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–2862 Filed 2–6–91; 8:45 am]

BILLING CODE 7537–01–M

Cooperative Agreements for Arts Design Access Program

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement to establish a conveniently located Design Access program, which will be a comprehensive national source of design information in a location accessible to the public. Design Access will consist of three components, a computerized information services component, technical assistance component, and publications component. Those interested in receiving the Solicitation package should reference Program Solicitation PS 91–03 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 91–03 is scheduled for release approximately February 25, 1991 with proposals due March 25, 1991.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Contracts Division, Room 217, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 91–2914 Filed 2–6–91; 8:45 am]

BILLING CODE 7537–01–M

Museum Advisory Panel; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Special Exhibitions II Section) to the National Council on the Arts will be held on February 25–March 1, 1991 from 9 a.m.–5:30 p.m. in room M–14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 25 from 9 a.m.–10 a.m. The topics will be opening remarks and general discussion.

The remaining portions of this meeting on February 25 from 10 a.m.–5:30 p.m. and February 26–march 1 from 9 a.m. to 5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman on December 11, 1990, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at their chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a diability, please contact the Office of Special Constituencies,

National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: January 29, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–2863 Filed 2–6–91; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Replacement of Some Paper Documents in Power Reactor LPDRs by Microfiche

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing that the portion of the paper document collections in each power reactor local public document room (LPDR) issued since January 1, 1981, will be replaced by microfiche.

DATES: The microfiche is expected to be shipped to each LPDR by the end of May 1991. Each LPDR will be visited by NRC LPDR staff during the remainder of FY91 and FY92 to set up the NUDOCS microfiche collections.

FOR FURTHER INFORMATION CONTACT: Ms. Jona Souder, LPDR Program Manager, Freedom of Information Act/Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–492–4344, or Toll-Free, 800–638–8081.

SUPPLEMENTARY INFORMATION: The libraries serving as LPDRs for commercially-operated nuclear power reactors have been receiving copies of documents on microfiche rather than in paper copy since July 1, 1990 (55 FR 22419). This conversion from a paper-based to a microfiche-based LPDR program was necessary because of space limitations within libraries to accommodate the ever-increasing volume of NRC documents, which has averaged six linear feet of documents per LPDR per year.

The publicly available portion of the NUDOCS microfiche file containing documents issued since January 1, 1981, will be provided to each power reactor LPDR to replace the paper copy documents for this period. With the addition of these microfiche, each LPDR collection will contain the same records available at the NRC's main Public Document Room in Washington, DC, since 1981. Each LPDR will have within its NUDOCS microfiche collection all NRC publicly available records issued since January 1, 1981. The only paper documents remaining in the LPDR collections once the microfiche is in place will be those documents dated prior to January 1981 and various reference tools and finding aids. The LPDR may choose to keep any or all of the paper records that have been replaced by microfiche, though the NRC will not reimburse the library for the shelf space required to store these paper records.

Equipment for viewing and copying documents on microfiche is available at each LPDR. Library staff and NRC LPDR staff will assist patrons in using the NUDOCS microfiche collection.

The principal goals of the LPDR program will continue to be met in a microfiche-based program. These goals are to assure that (1) copies of docketed records are placed in the LPDRs in a timely manner, (2) indexes are available that will permit users to find the records they seek within a reasonable amount of time, (3) copies can be made at a reasonable cost, and (4) the integrity of the collection is maintained.

Dated at Bethesda, Maryland, this 31st of January, 1991.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 91–2947 Filed 2–6–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–261]

Carolina Power & Light Co., H.B. Robinson Steam Electric Plant, Unit No. 2 (HBR–2); Exemption

I

Carolina Power & Light Company (CP&L) is the holder of Facility Operating License No. DRP–23, which authorizes operation of the H. B. Robinson Steam Electric Plant, Unit No. 2 (HBR–2). The license provides, among other things, that the licensee is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in Darlington County, South Carolina.

II

Pursuant to 10 CFR 55.59(c)(4)(i), which this exemption is being requested for, comprehensive requalification written examinations and annual operating tests shall be given to licensed operators.

III

HBR–2 has planned to return to power operation in January 1991 after an extensive refueling outage that began in September 1990. The licensee has proposed a one-time extension of the examination schedule for one calendar quarter from January 31, 1991 to April 30, 1991. This exemption would accommodate the work-schedules of the licensed operators who are engaged in outage related tasks. Compliance with the examination schedule as stipulated in 10 CFR 55.59(c)(4)(i) would place an extra burden on the work schedules of the licensed operators during the refueling outage. During the exemption period, the licensee has committed to continue the requalification program including scheduled training and all requirements of the requalification program except for the examinations. This one-time postponement of the examinations would not involve any significant impact on the safe operation of the plant; and the licensee would benefit from the availability of the plant personnel for the work scheduled during the refueling outage, including plant modifications to improve safety.

Pursuant to 10 CFR 55.11, "The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property and are otherwise in the public interest."

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 55.11, that an exemption as described in section III is authorized by law, will not endanger life or property and is otherwise in the public interest. Therefore, the Commission hereby grants the following exemption:

Carolina Power & Light Company is granted a one-time exemption from the requirements of 10 CFR 55.59(c)(4)(i) and postpone the completion of the licensed operator requalification examinations from January 31, 1991, to April 30, 1991.

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an Environmental Assessment and Finding of No Significant Impact has been prepared and was published in the **Federal Register** on January 31, 1991 (56 FR 3845). Accordingly, based upon the environmental assessment, the Commission has determined that the issuance of this exemption will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's request dated December 28, 1990, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of January 1991.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–2948 Filed 2–6–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–313]

Entergy Operations, Inc., Arkansas Nuclear One, Unit 1; Exemption

I

Entergy Operations, Inc. (the licensee) is the holder of Facility Operating License No. DPR–51, which authorizes operation of the Arkansas Nuclear One, Unit No. 1 (ANO–1). The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in Pope County, Arkansas.

II

Pursuant to 10 CFR 55.59(a), "Each licensee shall—(1) Successfully complete a requalification program developed by the facility licensee that has been approved by the Commission. This program shall be conducted for a continuous period not to exceed 24 months in duration. (2) Pass a comprehensive requalification written examination and an annual operating test." Also pursuant to 10 CFR 55.59(c)(1), "The requalification program must be conducted for a continuous period not to exceed two years, and upon conclusion must be promptly followed, pursuant to a continuous schedule, by successive requalification programs."

III

By letter dated November 2, 1990, the licensee requested an exemption under 10 CFR 55.11 from the annual and biennial schedule requirements of 10 CFR 55.59(a) and (c). The licensee is requesting a three-month extension in 1991 to align the ANO–1 requalification program with the National Examination Schedule. This one-time exemption will result in a permanent adjustment to the 24-month requalification cycle and the annual requalification examination schedule.

Generic Letter 89–03 established the National Examination Schedule and allotted examination months of February and August to ANO–1. The current ANO–1 requalification cycle ends in May 1991. The licensee stated that scheduling the examinations in February 1991 is causing hardships due to the compression of the training cycle which would be required, and due to the proximity of the ANO–1 and ANO–2 refueling outages. Also, the exemption is necessary to avoid operators' duplicative effort because of the misaligned schedules between the NRC and licensee administered requalification examinations.

Compliance with the regulations would create the hardships discussed above. Granting the exemption would allow a one-time, three-month extension to the annual and biennial schedule requirements, and it would alleviate the hardships discussed above. Also, the licensee has committed to continue to provide training to the operators during the months from May to August 1991.

Pursuant to 10 CFR 55.11, "The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property and are otherwise in the public interest."

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 55.11, that the exemption as described in section III is authoirzed by law, will not endanger life or property and is otherwise in the public interest. Therefore, the Commission hereby grants Entergy Operations, Inc. an exemption from the requirements of 10 CFR 55.59 (a) and (c) for the period of three-months.

Pursuant to 10 CFR 51.21, 51.32, and 51.35, the Commission determined that the granting of this exemption will not result in any significant environmental impact (56 FR 3120).

For further details with respect to this action, see the licensee's request dated November 2, 1990, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 31st day of January 1991.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director Division of Reactor Projects III, IV, and V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–2949 Filed 2–6–91; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Approval of OPM Attitudinal Survey Submitted to OMB for Expedited Clearance

AGENCY: Office of Personnel Management.

ACTION: Expedited notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces an expedited request for clearance of the attached OPM attitudinal telephone survey. This survey is required to carry out OPM's statutory mandate to evaluate the National Institute of Standards and Technology (NIST) Personnel Management Demonstration Project and to report our findings to Congress in an annual report.

Approximately 100 employees who separated from NIST in 190 are expected to be contacted by telephone on a one time basis; each telephone survey is expected to take 15 minutes to complete, for a total burden of 25 hours. A copy of the proposed survey questions appear below.

For copies of this proposal, call Marilyn Geldzahler, (202) 606–2890.

DATES: Comments on this proposal should be received by February 14, 1991. This is an expedited clearance and OMB approval is requested by February 21, 1991.

ADDRESSES: Send or deliver comments to Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: At the Office of Personnel Management, Marilyn Geldzahler, (202) 606–2890.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Survey of Former NIST employees

Introduction

Hello, my name is (interviewer name). I'm calling from HII, a research company located in the Washington, DC area. Am I speaking with (respondent name)?

We are conducting a survey of former employees of Nist on behalf of the U.S. Office of Personnel Management. This survey is part of a program evaluation of the NIST Personnel Management Demonstration Project. As you probably know, Congress passed legislation which authorized NIST to adopt such changes as pay banding, pay-for-performance, and increased direct hiring. Since you are a former employee, we are calling to ask a few questions about why you left NIST and your current activities. Recently, letters were sent from OPM and HII regarding the interview. The information and opinions you provide will be kept strictly confidential and used for statistical purposes only. None of your individual answers will be reported back to NIST. We estimate that the interview will take about 15 minutes.

I'd like to begin by asking you some background information.

Background Information

1. What was the month and year that you left employment at NIST?

2. How many years had you worked at NIST?

3. As of the date you left NIST, how many years had you worked for the Federal Government, in total?

4. Overall, how many years of full-time employment have you had outside of the Federal Government?

5. At the time you left, in what Major Organizational Unit [MOU] were you employed?

6. How long had you worked in that unit?

7. Was your job at NIST as . . .

a Scientist or Engineer,
An Administrative Staff Member,
a Scientific or Engineering Technician, or
a Support Staff Member?

8. Were you also supervisor or manager? yes no

9. What is your educational level?

Elementary School (Grades 1–8)
Some High School or Some Technical Training
Graduated From High School or GED (General Equivalency Diploma)
High School Diploma Plus Technical Training Or Apprenticeship
Some College
Two-year Associate Degree
Graduated From College (B.A., B.S., or Other Bachelor's Degree)
Some Graduate School
Master's Degree
Doctorate Degree (Ph.D., M.D., J.D., Ed.D.)

Before Leaving NIST

1. The next set of questions focuses on the time before you left NIST. What were the factors that made you want to leave NIST?

a. The work itself; Lack of challenge of the work, opportunity to do research in one's field, a change of work, interesting work, etc.

b. The public reputaton of NIST: It is no longer a top lab in my field, NIST is not known as a good place to work.

c, Financial aspects: The salary offered elsewhere, or salary plus fringe benefits or awards [bonuses].

c.1 Salary: Salaries at NIST were too low.

c.2 Benefits: The fringe benefits provided by other employers were better than those provided by NIST.

d. The chance for advancement: Lack of opportunities to "move up fast," can't make a name for oneself, promotion possibility poor, was not a good job to gain experience from, will not help in moving into industry, wanted to return to college or graduate study.

e. The people I worked with: No top scientists in my field are there; didn't meet nice people there; people are not competent; people do not care about what they are doing, etc.

f. Location was not attractive: Did not want to be in Washington (or Boulder) area; long commute; didn't like the environment; not compatible with spouse's career.

g. Job security reasons: The lack of long-term job security, the Federal retirement system, security of a Government position.

h. Facilities or funding available: The lack of research equipment, the lab equipment, the funding for research.

i. Competence of decision makers: The managers don't know how to run things; my supervisor was not able to manage well.

j. Management factors or "Bureaucracy": It was too difficult to get things done here; it was too large; Federal Government has too many rules and regulations; poor management; higher management was not supporting the needs of my program, etc.

k. Job offers: [Outside NIST] Job open; another job was available, so I accepted.

l. Personal reasons (not related to above): Wanted to stay home and raise a family.

m. Retirement: Of retirement age, just retired.

n. Other (Specify).

2. What aspects of your employment at NIST made you want to stay employed there, if any?

a. The work itself: The challenge of the work, opportunity to do research in one's field, a change of work, interesting work, etc.

b. The public reputation of NIST: It's a top lab in my field, NIST is known as a good place to work.

c. Financial aspects: The salary offered or salary plus fringe benefits or awards, bonus availability.

c.1 Salary: Salaries were good at NIST.

c.2 Benefits: The fringe benefits were good at NIST.

d. The chance for advancement: Opportunities to "move up fast," can make a name for oneself, promotion possibility good, was a good job to gain experience from, will help in moving into industry, etc.

e. The people I worked with: Top scientists in my field are there; met nice people there; people are competent; people care about what they are doing, etc.

f. Location was attractive: Wanted to be in Washington (or Boulder) area; no long commute; like the environment; compatibility with spouse's career.

g. Job security reasons: The long-term job security, the Federal retirement system, security of a government position. Waited for retirement eligibility.

h. Facilities or funding available: Research equipment, the lab equipment, the funding for research.

i. Competence of decision makers: My supervisor ran things well; managers know how to do things.

j. Management factors or "Bureaucracy": It is very well managed; things are done right.

k. No other job offers: It was the only job open; it was available, so I kept it. Didn't think I could get another job.

l. None: Nothing made me want to stay.

m. Other (Specify).

3. Just before you left NIST, how satisfied were you with your overall pay? Please respond on a scale of "very dissatisfied," "dissatisfied," "neither satisfied nor dissatisfied," "satisfied" or "very satisfied."

4. Would you say your rate of job advancement was faster, slower or about the same as your peers at NIST?

5. Using the same scale, how dissatisfied or satisfied were you with this rate of advancement?

Very Dissatisfied
Dissatisfied
Neither Satisfied Nor Dissatisfied
Satisfied
Very Satisfied

6. The next items refer to your feelings about your supervisor at NIST, that is, the person who signed your performance plan and appraisals.

How long had you worked with your last supervisor by the time you left NIST?

7. What was the month and year of your last formal performance appraisal at NIST?

8. What was the overall rating you received at that time?

Unsatisfactory
Marginal
Fully Successful
Commendable
Outstanding

9. Please think back to the time just before you left NIST and tell me how much you agree or disagree with each of the following statements. Please respond using a scale of strongly disagree, disagree, neither agree nor disagree, agree, or strongly agree.

a. There was effective two-way communication between my supervisor and me.

b. My supervisor had strong technical skills.

c. My supervisor had strong skills in managing the group.

d. My supervisor encouraged employee development.

e. My supervisor had adequate authority to reward employees appropriately for their performance.

f. The paperwork procedures and approvals at NIST hampered innovation and creativity.

g. In general, the personnel system at NIST worked well, while I was there.

h. While at NIST, I had the resources I needed to do my job well.

i. My supervisor did a good job of evaluating my performance.

j. I was paid farily for my performance.

10. Do you now receive retirement benefits for your time at NIST? Yes No

11. What aspects of the demonstration project, if any, had an affect on your decision to leave NIST? Some of the changes included were pay banding, pay-for-performance increases instead of steps, flexible probationary periods, and increased supervisory authority over personnel matters.

After Leaving NIST

1. The next questions focus on your activities since leaving NIST. What is your current employment status? Are you:

Employed Full-Time
Employed Part-Time (or Consulting)
Or Not employed

[If employed full-time, then skip next question.]

2. What are you currently doing, now that your're no longer employed full-time?

a. Retired, Not Working.

b. Part-Time Job (Semi-Retired, or Other Status).

c. Semi-Retired, Consulting (e.g., Upon Request).

d. Volunteer Work.

e. Unemployed, But Looking For A Job.

f. Raising A Family.

g. Other Family Responsibilities (e.g., Taking Care of Aged Parent).

h. Returned to College or Graduate School.

i. Other.

[If not currently employed full-time go to Background Item 10 on the last page.]

3. Is your current job the only one you have held full-time, since leaving NIST? Yes No

4. In what type of organization are you currently employed? Is it in:

Private Industry
Another Federal Agency
A University
Another Public or Non-Profit Agency, or
Are you Self-Employed?

5. Did you actively search for your new job before leaving NIST, did you leave NIST then look for a new job, or were you recruited for your new job without an active search?

6. Is the work in your current job generally in the same career line as at NIST, or have you changed career fields?

7. Think now about your current salary [or earnings for, self-employed] in comparison with your salary at NIST. Is your current salary substantially higher, a little higher, about the same, a little lower, or substantially lower than your salary was at NIST?

8. Was the salary [or earnings] in your current job a major consideration, a minor consideration, or of no concern in your decision to accept it?

9. Were the fringe benefits a major consideration, a minor consideration, or of no concern in your decision to accept your current job? (By fringe benefits, we mean things such as pension plans, bonuses, vacation or sick leave, insurance plans, child care, or other provisions having monetary value.)

10. Which types of fringe benefits did you consider, either positively or negatively in your decision to take a current job? (By fringe benefits, we mean things such as pension plans, bonuses, vacation or sick leave, insurance plans, child care, or other provisions having monetary value.)

11. [For each type mentioned] Did you feel that benefits were better at NIST, about the same at both places, or better in the new job?

a. Retirement or Pension Plan.

b. Cash Awards or Bonuses Possible.

c. Employee Ownership or Stock Plans.

d. Vacation or Annual Leave (Amount).

e. Sick Time Provisions.

f. Exercise or Health Facilities (on Premises or Made Available).

g. Health Insurance Payments or Coverage.

h. Dental Insurance.

i. Life Insurance Provided.

j. Child Care Available on Premises.

k. Child Care, Other Provisions.

l. College Expenses for Self or Children.

m. Parking (or Other Transportation Benefit).

n. Relocation Expenses (Moving Household).

12. Overall, how satisfied are you with your new job, again using a scale ranging from very dissatisfied to very satisfied:

Very Dissatisfied
Dissatisfied
Neither Satisfied Nor Dissatisfied
Satisfied
Very Satisfied

Background Information

10. What is your current age?

11. Are you Male Female?

This concludes the questions I have. Do you have any (other) comments you would like to make?

Thank you very much for taking the time to participate in this survey. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Reports and Forms Management Officer, U.S. Office of Personnel Management, 1900 E St., NW., Washington, DC 20415; and to the Office of Management and Budget, Paperwork Reduction Project (3206), Washington, DC 20503.

[FR Doc. 91–2931 Filed 2–6–91; 8:45 am]

BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Employee Representatives' Status and Compensation Reports.
(2) *Form(s) submitted:* DC–2a, DC–2.
(3) *OMB Number:* 3220–0014.
(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.
(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
(6) *Frequency of response:* On occasion or Annually.
(7) *Respondents:* Businesses or other for-profit.
(8) *Estimated annual number of respondents):* 25.
(9) *Total annual responses:* 30.
(10) *Average time per response:* .43 hours.
(11) *Total annual reporting hours:* 13.
(12) *Collection description:* Benefits are provided under the Railroad Retirement Act (RRA) for individuals who are employee representatives as defined in section 1 of that Act. The collection obtains information on the status of such individuals and their compensation.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 91–2915 Filed 2–6–91; 8:45 am]

BILLING CODE 7905–01–M

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSALS(S):

(1) *Collection title:* Student Beneficiary Monitoring.
(2) *Form(s) submitted:* G–315, G–315a.
(3) *OMB Number:* 3220–0123.
(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.
(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
(6) *Frequency of response:* On occasion of semi-annually.
(7) *Respondents:* Individuals or households, Non-profit institutions.
(8) *Estimated annual number of respondents:* 1,100.
(9) *Total annual responses:* 2,400.
(10) *Average time per response:* .085 hours.
(11) *Total annual reporting hours:* 204.
(12) *Collection description:* Under the Railroad Retirement Act (RRA), a student benefit is not payable if the student ceases full-time school attendance, marries, works in the railroad industry, has excessive earnings or attains the upper age limit under the RRA. The report obtains information to be used in determining if benefits should cease or be reduced.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 91–2916 Filed 2–6–91; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–28842; Filed No. SR–GSCC–90–06]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Temporarily Approving a Proposed Rule Change Relating to the Netting of Zero Coupon Government Securities

On September 26, 1990, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (Filed No. SR–GSCC–90–06) pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change would expand GSCC's netting service [2] to include book-entry zero coupon securities ("zeros"). On November 16, 1990, notice of the proposed rule change was published in the **Federal Register** to solicit comments from interested persons.[3] No comments were received. This order approves the proposed rule change on a temporary basis until April 30, 1992.

I. Description

The proposal would authorize GSCC to offer net settlement services to its members for trades in zeros [4] and to require clearing fund deposits to protect GSCC against the risk of a member default on its net settlement obligations.[5] In addition, the proposal

[1] 15 U.S.C. 78s(b) (1989).

[2] See Securities Exchange Act Release Nos. 27901 (April 12, 1990), 55 FR 15055; 27006 (July 7, 1989), 54 FR 29798.

[3] Securities Exchange Act Release No. 28603 (November 8, 1990), 55 FR 4776.

[4] The zeros that will be made eligible for GSCC's netting service are book-entry government securities including STRIPS (STRIPS is an acronym for Separate Trading of Registered Interest and Principal of Securities, which are pre-stripped, book-entry, zeros that are direct obligations of the U.S. Treasury) and zeros issued by agencies of the U.S. Government such as the Federal Home Loan Mortgage Association (FHLMA) and the Student Loan Marketing Association (SLMA). GSCC will not, however, make eligible for netting generic or privately stripped securities such as Certificates of Accrual on Treasury Securities ("CATS") or Lehman Investment Opportunity Notes ("LIONS"). Association (FHLMA) and the Student Loan Marketing Association (SLMA). GSCC will not, however, make eligible for netting generic or privately stripped securities such as Certificates of Accrual on Treasury Securities ("CATS") or Lehman Investment Opportunity Notes ("LIONS).

[5] For a more detailed discussion of GSCC's netting system, see Securities Exchange Act Release No. 27901 (April 12, 1990), 55 FR 15055, *supra* n. 2.

would revise GSCC's rules to clarify GSCC's authority and procedures for collecting increased clearing fund deposits.

GSCC's netting service for zeros will operate in essentially the same way as for other securities eligible for GSCC's trade netting service. In general, GSCC netting members must submit to GSCC for comparison and netting data on all of the member's eligible trades with other netting members. On each business day GSCC will net member trades for each eligible security with a separate CUSIP [6] in order to determine the clearing members; net position (a net long position will result if purchases exceed sales; a net short position will result if sales exceed purchases; and a net flat position will result if purchases equal sales). GSCC will then match all net long and short positions of members on a CUSIP by CUSIP basis into sets of receive and deliver obligations. On the morning after trade date members will receive a Funds-Only Settlement Report, a Netted Trade Summary Report and an Open Receive/Deliver Orders Report. These reports will provide members information regarding payments due from or owed to netting members, what trades entered the netting system and the resulting net, and the substitution of GSCC as the contra-party (novation) to all open netted positions.[7] Once the reports are available, each member must provide settlement instructions to its clearing agent bank. Settlement of net delivery obligations between each member and GSCC will be made over Fedwire on the day after trade date.

The proposal would modify GSCC's clearing fund formula [8] to account for the market risk associated with net trades in zeros GSCC has guaranteed.[9] GSCC will create a new schedule of margin factors that take into account the greater volatility associated with zeros. GSCC will use the margin factors as an element in determining the securities net settlement component of the required clearing fund deposit.[10] GSCC has established a margin factor for each maturity range within each product group.[11] That factor is a percentage, which is generally designed to measure the potential volatility of prices in that maturity range. The method by which GSCC will determine the clearing member's required margin deposit for positions in zeros also will take into account the clearing member's individual risk profile.

As between GSCC's margin factors for zeros and its margin factors for non zeros, the margin factors are the same for zeros and non zeros with remaining maturities of up to 2 years.

Thereafter, GSCC's margin factors for zeros and non zeros are as diagramed below:

Offset class	Remaining maturity	Zero	Non zero
D	2 to 4 years	.625	.500
E	4 to 5 years	.938	.625
E	5 to 7 years	1.313	.750
F	7 to 10 years	1.870	.935
F	10 to 15 years	2.013	1.250
G	Over 15 years	3.625	1.450

GSCC will not allow any offsets between zeros and non zeros. GSCC is taking a conservative approach to disallowing offsets between zeros and non zeros because available historical data indicates that there is a poor correlation between these classes of securities.

A member's required margin will be the greater of either the average offset margin amount or 50% of the gross margin amount.[12] The gross margin amount is the appropriate margin factor multiplied by the total dollar value of the member's net settlement position. The offset margin amount is calculated by subtracting a credit for offsetting net settlement positions from the gross margin amount of the member's net settlement positions. The average offset margin amount is the average offset margin for the last 20 days during which GSCC calculated net settlement positions. To illustrate the procedure for determining a clearing mother's required margin, assume for example, that, without undue concentration in zeros, clearing member *A* has a net settlement delivery obligation of $100,000 in zeros with a remaining maturity of 17 years, and a net settlement receive of $200,000 in zeros with a remaining maturity of 6 years. The 17-year zero is in offset class *G* and the 6-year zero is in offset class *E*.The margin factors for two securities are 3.625% and 1.313%, respectively. The gross margin amount (without allowing for hedges) would be [($100,000×3.625%)+($200,000×1.313%)]=$3,625+$2,626=$6,251,00.

In determining the offset margin amount, the clearing fund formula allows consideration of hedges within a netting member's net settlement positions. GSCC essentially will allow $2,626 of the margin associated with the $20,000 receive obligation to offset the margin associated with the $100,000 deliver obligation.[13] Continuing the example above, the 17-year zero has a .30 disallowance factor (*i.e.*, GSCC will allow a .70 credit) when hedged against the 6-year zero. So, the calculation of the offset margin amount would appear as [($3,625–$999.00)+$2,626](.30)+$999.00=$1,575.60+$999.00=$2,574.60.[14] Since GSCC requires the member to deposit the greater of 50% of the gross margin amount or the average offset margin amount, the member's required margin deposit will be 50% of the gross margin amount or $3,125.50.[15] By

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[6] "CUSIP" is an acronym for the Committee on Uniform Securities Identification Procedures. The CUSIP numbering system was developed by a committee of the American Bankers Association bearing the same name and was recreated to identify specific securities issues. Each eligible netting security issue has its own separate CUSIP number that GSCC uses in its netting system to group trades for the net.

[7] Once netting has occurred, GSCC is liable to pay for securities sold to a member or to deliver securities bought from a member. GSCC requires members to make deposits to GSCC's clearing fund to help protect against the risk of loss to GSCC in the event of a clearing member default.

[8] The current clearing fund formula has two components—funds-only settlement component and securities net settlement component. A netting member's required clearing fund deposit will be the sum of the two components. See *infra* n. 12.

[9] "Market risk" is the risk that the value of the securities GSCC has guaranteed will decline so that a subsequent trade will result in financial loss.

[10] The securities net settlement component of GSCC's clearing fund formula is essentially the same amount as the member's required margin deposit. This component will be referred to hereinafter as the "required margin" or the "required margin deposit."

[11] Since the margin factor for zeros are tailored to each maturity group, the projected volatility of zeros will be reflected in the required margin subcomponent. At the longest remaining period to maturity (*i.e.*, over 15 years) the zero margin factor is two and a half times greater than the non zero margin factor. Remaining maturity of forward settling zeroes will be measured from the date of issuance of the underlying securites.

[12] Total amount of required clearing fund deposit=A+B where,

A=1.25(v)

and

B=(Σ[x(y)−z])÷20

or B=.50[x(y)], if, .50[x(y)] >(Σi([x(y)−z])÷20.

[13] This means that the required margin for the receive obligation in excess of the $2,626 required margin for the $100,000 delivery obligation (in this case $999.00) will be deducted prior to applying the disallowance factor, however, this amount will be added to the calculation after the disallowance to determine the final offset margin amount. If, however, the clearing member had another receive obligation, the gross margin for that position could be offset against the $999.00. Telephone conversation between Jeffrey F. Ingber, Associate General Counsel, GSCC, and Sonia Burnett, Attorney, Division of Market Regulation, Commission (December 21, 1990).

[14] Assume for purposes of this example that the average offset margin amount over the previous 20 business days is the same as the offset margin amount.

[15] Fifty-percent of the gross margin amount is .50×6251=3125.5

requiring a netting member to deposit, at minimum, 50% of the gross margin amount, GSCC seeks to avoid inherent liquidity exposure with respect to netting by novation.

GSCC's proposed methodology for determining the required margin for zeros is based, in part, in the U.S. Treasury Department's ("Treasury") haircut requirements for zeros and non zeros for government securities broker/dealers.[16] GSCC believes that the Treasury's approach represents a reasonable and conservative approach to risk assessment. GSCC, however, will continue to build its own risk assessment profile for zeros. Until GSCC collects sufficient historical data regarding zeros, GSCC will review its price valatility data for consistency with quarterly market volatility data provided by Carrol, McEntee & McGinley Inc. The approach taken at this time may be modified as experience increases and more data is accumulated that satisfactorily takes into account the historical and implied volatility of zeros.

GSCC will monitor a clearing member's positions in zeros as they relate to the member's total positions in other zeros and in relation to the member's total non zero positions. A member will be deemed to have undue concentration in zeros generally if the dollar value of a member's net settlement positions in zeros equals or exceeds 25% of the dollar value of the member's net settlement positions in all issues eligible for the net. A member will be deemed to have undue concentration in zeros with the same range of remaining maturity if the dollar value of the member's net settlement positions in zeros with the same range of remaining maturity equals or exceeds 50% of the total dollar value of the member's net settlement positions in zeros.

By monitoring each clearing member's level of concentration in zeros, GSCC will be able to assess the potential for financial exposure to GSCC and its remaining clearing members. If a clearing member is found to have undue concentration in zeros generally or as compared to other zero issues, GSCC will determine whether it is necessary to require the member to make an additional deposit to the clearing fund.

The additional deposit could range up to 200% of the netting member's highest single business day's required fund deposit during the most recent 20 business days. If, however, GSCC's Board of Directors ("Board") determines that such an amount is not sufficient for the protection of GSCC and its members, a higher amount will be set by the Board. In such a case, the additional deposit, once it is made, will become a part of the clearing member's required clearing fund deposit.[17] GSCC's Membership and Standards Committee will review the procedure for collection of clearing fund collateral periodically to determine the appropriateness of the procedure.

The proposal also will clarify GSCC's rules regarding GSCC's authority to require clearing members to make additional deposits to GSCC's clearing fund, the types of eligible collateral that a clearing member may deposit to satisfy these requirements, and the conditions under which GSCC may impose such a requirement. The proposed amendments contain essentially the same requirements as the existing rule, and would delineate more clearly GSCC's procedures and requirements for the additional clearing fund deposit.[18]

Consistent with GSCC's existing rules, the new rule essentially will allow GSCC, in its discretion, to notify a member that it must increase the amount of its required fund deposit. GSCC may notify a clearing member that it is required to make an additional deposit to the clearing fund if: (1) The member is on surveillance status and the member's required fund deposit exceeds the value of the member's deposits to the clearing fund; (2) the member's required fund deposit exceeds by 25% or more the value of the member's deposits to the clearing fund; (3) the member's required fund deposit exceeds by $250,000 or more the value of the member's deposits to the clearing fund; or (4) the member's funds-only settlement amount exceeds by 25% or more the member's average daily clearing fund funds-only settlement amount over the most recent 20 business days. If a member is so notified, the member may satisfy the requirement by depositing eligible securities in the form of cash, eligible Treasury securities, and/or eligible letters of credit.

As a general rule, GSCC will continue to require that the additional deposit be made by the close of business on the day of notification. If, however, the notice is not made available to the member prior to 3 p.m., the additional deposit requirement may be satisfied by 12 noon on the following business day.

II. Discussion

The Commission believes that GSCC's proposal is a reasonable approach designed to minimize the risk associated with the clearance and settlement of zeros. GSCC's scheme for determining margin factors is based upon the Treasury haircut requirements and periodic market volatility data obtained from other sources. Although the margin factors themselves are not identical to the Treasury haircut requirements for securities in the same maturity ranges, the relationship between GSCC's margin factors for zeros and non zeros approximate the percentage difference between the Treasury haircut requirements for zeros and non zeros.[19]

GSCC's proposal will extend the benefits of GSCC's centralized, automated netting system to netting members that trade in zeros. The Commission believes that GSCC's proposed netting procedure will provide increased efficiency for GSCC netting members.

GSCC's proposal will enable GSCC to measure the market risk and potential financial exposure presented by a specific transaction. GSCC has in place certain oversight provisions that may result in an increased clearing fund deposit if GSCC determines that the member's positions present an increased likelihood of exposure. In addition, GSCC will prohibit offsets among zeros and non zeros because of the poor correlation among these classes of securities. Moreover, the clearing fund formula applicable to zeros is based on

[16] The "haircut" is the amount by which the value of a security is discounted in determining capital requirements for government securities broker/dealers. See 17 CFR 402.2 (1990). By way of comparison, the Treasury uses the same haircut disallowance factors for zeros and non zeros. GSCC and the Treasury, however, do not use the same time intervals for determining the remaining period to maturity. Therefore, GSCC's offset classes do not correspond to the Treasury's offset classes. Zeros with maturities of 7 to 10 years, for example, would fall into GSCC's offset class *F* with a margin factor of .935%, while zeros with the same years remaining to maturity fall into two Treasury offset classes—*G* and *H*. The haircut factor for offset class *G* is 3.30%, but the haircut factor for offset class *H* is 4.50%. In comparing GSCC's margin factors for zeros to the Treasury haircut factors for zeros, the Treasury haircut factors correspond to the longest remaining period to maturity within a maturity range. Thus, in this example the margin factor for GSCC's 7- to 10-year maturity range (.935%) would be compared to the Treasury haircut factor representing a 10-year remaining maturity (4.50%).

[17] See Revised GSCC Rule 4, Section 3, File No. SR–GSCC–90–06.

[18] GSCC will calculate daily each netting member's clearing fund contribution requirement and determine whether the netting member's deposit exceeds its required clearing fund contribution. The member's clearing fund contribution requirement is based upon the risk to GSCC resulting from the member's daily settlement activities.

[19] For zeros with maturities ranging from 5 years to over 15 years, the percentage spread between GSCC's margin factors for zeros and non zeros exceeds the percentage spread between Treasury haircut factors for zeros and non zeros in 3 out of 4 of the maturity ranges.

current market data, taking into account the opportunity cost for long-term zeros. The Commission believes that these are prudent measures to help ensure the financial soundness of GSCC and to help safeguard netting member assets.

As an additional safeguard, if a member's zero securities transactions processed in GSCC's netting system exceed 25% of the dollar value of the member's net settlement positions in all issues eligible for the net, GSCC may require the member to make an additional clearing fund deposit. At the very least, concentration in zeros above the levels specified will precipitate increased surveillance of the portfolio of positions held by the netting member.

The Commission believes that GSCC has the capacity to accommodate trades in zeros in its netting system. GSCC has satisfactorily operated its netting system for netting member trades in non zeros for more than one year without any operational problems. Like those securities, eligible zeros are only available in book-entry form and settlement of net delivery obligations between each netting member and GSCC will be made over Fedwire. GSCC has represented to the Commission that it will be able to include zeros in its netting system while continuing to operate its netting system accurately and within time frames established by GSCC during current and reasonably anticipated future average daily and peak processing days.[20]

GSCC believes that its approach to netting zeros is reasonable. The Commission believes that GSCC's method of determining the applicable margin factor is reasonable in light of the lack of historical data on which to base the margin assessment. The Commission is concerned, however, about the accuracy with which GSCC's current methodology reflects the historical and implied volatility of zeros. The Commission notes that including zeros in its netting system creates new market risk for GSCC and its membership. Zeros with remaining time to maturity in excess of two years exhibit greater volatility than non zero securities in the same maturity range and that volatility increases as the remaining time to maturity increases. Also, zeros are generally more sensitive to fluctuations in interest rates and movements in the market. The Commission understands that, by their very nature, margin intervals must be set within an environment of imperfect knowledge regarding the future course of volatility. However, because GSCC's current clearing fund formula "serve[s] as a mechanism for GSCC to measure the risk profile of its members' securities settlement obligations, the Commission believes that GSCC's margin factors should be set at a level of protection in light of current market conditions" taking into account the unusual historical and implied volatility associated with zeros.[21]

The Commission believes that GSCC should move forward in gathering historical and implied volatility data and in developing a method to analyze such data. The Commission believes that GSCC should explore the development of an automated system to assess, on a daily basis, historical and potential price movements of zeros and the implications of such movements on GSCC's margin factors applicable to zeros. This will add greater precision to GSCC's risk management processes and help minimize market risk associated with clearance and settlement of zeros.

III. Summary

The Commission preliminarily finds that the proposal is consistent with section 17A of the Act. In light of the significance of this proposal to GSCC and its clearing members, and in light of the probability that GSCC's methodology for risk analysis will be modified at a future date, the Commission believes that GSCC's proposal should be subject to further review based on experience operating the proposed netting system. For this reason, the Commission is approving the proposal on a temporary basis until April 30, 1992.[22] At that time, the Commission will revisit with GSCC the issue of modifying GSCC's margin factor methodology.

To assist the Commission in determining whether the proposal should become a permanent part of GSCC's Rules and Procedures, the Commission expects GSCC to comply with the following undertakings:

1. GSCC will continue to monitor its clearing members' concentration in zeros, and GSCC will report to the Commission quarterly any situation where GSCC could have made a special call for additional clearing fund deposits pursuant to GSCC's Rules and Procedures, and the amount assessed, if any.

2. GSCC will continue to monitor the adequacy of its zero netting system and, in consultation with the Commission, make adjustments as necessary. The Commission expects GSCC to continue to build its base of historical and implied volatility data and to continue exploring a means of analyzing such data, including procedures to consider the effects of dramatic price movements.[23]

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–GSCC–90–06) be, and hereby is, approved on a temporary basis until April 30, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–(a)(12) (1990).

Dated: January 31, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–2956 Filed 2–6–91; 8:45 am]

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[Release No. 34–28844; File No. SR–MSTC–91–01]

Self-Regulatory Organizations; Midwest Securities Trust Company; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of Proposed Rule Change Establishing the Institutional Participant Services Program

February 1, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934,[1] notice is hereby given that on January 31, 1991, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by MSTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[20] See letter from Jeffrey F. Ingber, Associate General Counsel, GSCC, to Sonia Burnett, Attorney, Division of Market Regulation, Commission (dated January 17, 1991).

[21] See Securities Exchange Act Release No. 27006, *supra* n. 2.

[22] The Commission expects GSCC to file for an extension of approval of the proposed rule change by January 31, 1992.

[23] GSCC may increase any of the margin factor percentages upon a determination that such increase is appropriate in light of market experience and conditions. GSCC, however, may decrease margin factor percentages upon submission and review of a proposed rule change pursuant to section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2). The Commission stipulated a similar requirement in an order temporarily approving modifications to GSCC's clearing fund formula. See Securities Exchange Act Release No. 27901 *supra* n. 5.

[1] 15 U.S.C. 78s(b).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as exhibit A is the text of a proposed rule change which establishes (i) the Institutional Participant Services Program ("Program"), and (ii) a new category of participants ("Institutions"). Also attached as exhibit B is MSTC's procedures for the Program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC 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. MSTC 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 1, 1990, the Commission issued an order approving the Program on a temporary basis until January 31, 1991 ("Temporary Approval Period").[2] The rationale for approving the Program on a temporary basis was to provide MSTC with the opportunity to formulate more definitive financial and operational standards for Institutions that desire to participate in the Program. On December 26, 1990, MSTC filed a proposed rule change (SR–MSTC–90–10) which requested permanent approval of the Program and proposed more definitive standards of participation and financial and operational capabilities for Institutions. To provide the Commission with the opportunity to review these standards while providing continuity of service to Institutions that currently participate in the Program, this proposed rule change requests that the Commission extend the Program under the terms of the Temporary Approval Order until July 31, 1991.[3]

[2] Securities Exchange Act Release No. 27752 (March 1, 1990), 55 FR 8271 ("Temporary Approval Order").

[3] For a complete description of the services offered under the Program and the current standards of financial and operational capabilities for Institutions under the Program, see Temporary A ·oval Order.

MSTC believes that the proposed rule change is consistent with section 17A of the Act because it will promote the prompt and accurate clearance and settlement of securities transactions and the safeguarding of funds and securities by providing Institutions with the opportunity to participate directly in MSTC.

B. Self-Regulatory Organization's Statement on Burden on Competition

MSTC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

MSTC has not received any comments from participants of the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing of Commission Action

MSTC requests the Commission to find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. Such accelerated approval would permit MSTC to offer continuity of service to Institutions that participate in the Program while providing the Commission with sufficient time to analyze the more definitive standards of participation and financial operational capability recently proposed by MSTC.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and, in particular, the requirements of secton 17A and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The Commission does not anticipate that it will receive any significant negative comment on the proposed rule change in view of the fact that no comments were received on the proposal approved in the Temporary Approval Order, which was identical in substance to the proposed rule change. Further, the Commission notes that the Program has operated without incident during the Temporary Approval Period. Thus, acceleraed approval of the proposed rule change on a temporary basis will permit MSTC to provide continuity of service to those Institutions that currently participate in the Program while the Commission reviews MSTC's proposed permanent standards of financial and operational capabilities for such Institutions.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissons, 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 provisons of 5 U.S.C 552, will be available for inspection and copying at the principal office of MSTC. All submissions should refer to file number SR–MSTC–91–01 and should be submitted by February 28, 1991.

It is therefore ordered, pursunt to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved on a temporary basis until July 31, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

Article I, Rule 1 (Definitions and General Provisions—Definitions)

Institutional Participant

The term "Institutional Participant" shall mean state-supervised or regulated insurance companies, investment companies registered with the Securities and Exchange Commission, and other similar funds or institutions, as described in Rule 1 of Article V, who maintain an account with the Corporation pursuant to these Rules and the Institutional Participant Services Program.

Article II, Rule 6 (Settlement Services)

Institutional Participant Services Program

The Corporation may establish a service and Procedures for the offering of Depository services, including the book-entry settlement and safekeeping of Securities, on behalf of Institutional Participants. An applicant may become an Institutional Participant by filing with the Corporation any appropriate registration form so designated by the Corporation. Institutional Participants shall be subject to all applicable Rules and Procedures of the Corporation,

except as modified by these rules, including Article VI, Rule 2, Sec. 4 (Participants' Fund) and Article V, Rule 1, Sec. 1 (Participants), and the Procedures of the Corporation relating the Institutional Participant Services Program. Institutional Participants shall pay the Corporation the amounts specified in the fee schedule for the Institutional Participants' Services Program.

Article V, Rule 1, Section 2 (Duties of Participants)

Sec. 2. In addition to those qualifications listed in Section 1 above, applicants to become an Institutional Participant pursuant to the Corporation's Institutional Participant Services Program shall meet the following qualifications;

(a) Each Institutional Participant shall submit to the Corporation the following reports, and such other reports and financial information that the Corporation may from time to time require:

(i) If subject to state, federal or other governmental regulation or supervision, copies of all financial reports promptly after their submission or filing to regulatory authorities.

(ii) If not subject to state, federal or other governmental regulation or supervision, or if not required to file financial reports with regulatory authorities, (A) copies of unaudited quarterly financial statements (prepared in accordance with generally accepted accounting standards), within 30 days after the close of each fiscal quarter, and (B) copies of annual financial statements, audited by independent public accountants, within 45 days after the end of each fiscal year. Institutional Participants shall also submit copies of financial statements or reports on more than a quarterly basis if requested by the Corporation.

In addition, the Institutional Participant shall promptly advise the Corporation of any decrease of 10% or more in either its net assets (or net assets under management), or its revenue or income, during any period.

(b) The Corporation may also require such other financial statements or information as may be necessary to assure the Corporation that the Institutional Participant's financial condition and performance, including information as to the level and quality of earnings and other generally accepted measures of liquidity, capital adequacy and profitability, do not create undue risks to the Corporation, Participants or other Institutional Participants.

(c) Each applicant to become an Institutional Participant shall demonstrate to the satisfaction of the Corporation sufficient operational capability necessary to utilize the services of, and fulfill its obligations to, the Corporation. Prior to approval, the Corporation must be satisfied that any applicant to become an Institutional Participant: (i) Has an established business history of a minimum of one year or personnel with sufficient operation background and experience to ensure the Institutional Participant's ability to conduct business with the Corporation; (ii) has the required personnel, operational capability, and physical facilities necessary to fulfill its obligations to, and meet the operational requirements of, the Corporation; and (iii) maintains a minimum of $50 million in net assets, either directly or under management. An applicant with less than such $50 million may be admitted, but must demonstrate to the Corporation's satisfaction that its net assets (or net assets under management) will reach at least $50 million within one year of admission as a Participant.

(d) Any insurance company qualifying as an Institutional Participant shall meet those minimally acceptable ratings by a nationally recognized rating service(s), as the Corporation may from time to time determine.

Article VI, Rule 2, Sec. 4 (Participants—Participants Fund)

* * * * *

Notwithstanding the above, in the event of an assessment by the Corporation pursuant to this section 4, the Corporation shall apply the Participants Fund contributions of (i) Institutional Participants solely to discharge losses or liabilities arising by reason of defaults by Institutional Participants, and (ii) non-Institutional Participants solely to discharge losses or liabilities arising by reason of defaults by non-Institutional Participants. However, the Corporation shall apply the Participants Fund contributions of both Institutional Participants and non-Institutional Participants to the extent that the Corporation suffers any excess loss arising by reason of a default in a transaction or transactions involving an Institutional Participant and a non-Institutional Participant.

Exhibit B—Description of Services

Direct participation with Midwest Securities Trust Company means direct participation in the national market system. MSTC is one of the nation's largest depositories for equities, corporate debt and municipal bond securities. With an excess of 700,000 different issues eligible for deposit, MSTC currently safekeeps securities assets for more than 340 participants.

The Midwest Stock Exchange, Inc. created MSTC as a wholly owned subsidiary in 1973. The sole purpose of MSTC is to provide the securities industry with a means for safe, reliable, and cost-effective securities processing and safekeeping. Since its creation in 1973, MSTC has been providing custodial services to brokers, banks, institutional investors and other depositories.

MSTC's book-entry settlement system and safekeeping facilities eliminate the need for physical movements of securities between trading partners. Everyday more than 30,000 transactions are processed by MSTC. Communications links provide MSTC participants with a settlement system through which they can deal directly with members of other domestic and foreign depositories.

Transaction processing

Trade Settlement—MSTC Participants have direct access to the National Institutional Delivery System (NIDS) which provides trade recording, confirmation and automatic settlement for institutional trades. Through this system, participants are able to settle trades via book-entry transactions regardless of the depository in which trading partners participate.

Physical Security Movements—MSTC provides institutional participants with facilities to make physical receipts and deliveries of securities as necessary through agreement with Midwest Clearing Corp. These programs are known as Correspondent Delivery and Collection Service (CDCS) and Correspondent Receipt vs Payment Service (CRPS). MSTC also provides for the physical deposit and withdrawal of securities, and for the transfer of registration of securities.

Securities Lending—MSTC provides its participants with a book-entry delivery facility through which participants can process securities loans. Depository-eligible securities can be delivered to and received from lending partners against payment regardless of the depository in which they participate.

Activity Reporting—A daily report of all account activity is provided including all cash and security transactions. This report is available in printed form, on microfiche, on computer tape, by data file transfer, or by terminal access. MSTC also provides inquiry screens through the MSTC communications terminal. These screens detail the current day's activity and inventory.

Security Custody

MSTC provides safekeeping for depository eligible securities. Registerd securities are held in non-negotiable form under MSTC's nominee name of Kray & Co. Bearer bond securities are held on deposit at an appropriate federal or state regulated sub-custodian. Extensive computerized records of securities entering and leaving the custody system document cusip numbers, denominations, and dates of deposits or withdrawal. These records provide a detailed audit trail for research and reconciliation.

MSTC is registered as a Clearing Agency under the regulatory authority of the Securities and Exchange Commission ("SEC"). As such, it is appropriately insured, monitored, audited and inspected to safeguard participant's assets. It is also incorporated as an Illinois trust company and is a member of the Federal Reserve Bank System.

Income Collection—Interest and dividend payments are posted and credited automatically on payable date. MSTC reserves the right to defer credit of dividend and interest income until such amounts have been received from the paying agent or issuer if, (i) MSTC has reason to believe or is concerned that the paying agent or issuer will default or fail to make prompt payment on payable date, or (ii) anticipated amounts due are in excess of amounts determined by MSTC as either available or prudent for advance prior to the receipt of funds from the paying agent or issuer.

Voluntary Reorganization Processing—MSTC will accept and process instructions to tender securities where a voluntary tender or action is available to security owners. Proceeds will be credited to the participants account as received from the paying agent.

Call/Put Processing—MSTC assumes responsibility to identify, process and remit securities that are subject to an issuer call whenever those calls are published in accordance with the SEC recommended guidelines on redemption notification. Participants accounts will be credited with the proceeds from the call when the paying agent makes funds available to MSTC. Put option processing will be done by MSTC upon instructions from the institutional participant. While it is the responsibility of the participant to know the put options available on its investments, MSTC assumes responsibility for processing all instructions received in time to tender.

Proxy Processing—For securities held in its nominee name, MSTC provides the issuers with information on shares held by each participant. The issuers are then advised to communicate proxy data directly to the participant. In this manner participants are assured the ability to exercise ownership rights.

Dividend Reininvestment Processing—MSTC provides the capability to its participants to participate in corporate dividend reinvestment programs where the issuer provides such a service.

Reporting—All security positions held by MSTC for its participants are reported on the Net Position report. This report is available daily or weekly and in a variety of delivery methods, including on-line inquiry by issue.

Settlement

At the end of each business day MSTC nets each participants cash debits and credits resulting from account activity into one pay or collect figure. Participants must reconcile the figure with MSTC each pay. Participants can settle with MSTC through an approved settlement bank or through a cash account maintained by MSTC.

Communications

MSTC and its Participants have a record of leadership in the automation of data communications. Participants utilize a range of high-speed computer-to-computer links and dial-up services to make daily reconciliation of activities and inventory as timely and cost-efficient as possible. The communications links listed below provide choices for participants with varying degrees of internal automation.

- Computer to Computer transmissions
- Machine Readable Magnetic Tape Input/Output
- Dail-Up Terminal
- Dedicated Terminal
- Microfiche
- Hardcopy Reports

Customer Support

Account Administration—MSTC assigns an Account Administrator to each institutional participant. The Account Administrator is the primary point of contact and acts as the liaison between the institution and MSTC Operations. The Account Administrator is responsible for being familiar with investment operations at the institution so that he/she can monitor account activity and handle day-to-day inquiries as effectively as possible. MSTC requires all Account Administrators to complete a thorough training program on all operational areas at MSTC.

MSTC will provide an annual operational review for each institutional participant. Institutions are provided with a written report on the effectiveness of its utilization of the depository. The report, when appropriate, will make recommendations for cost reduction or more efficient and secure processing.

Training—Staff members from MSTC's Training and Education department are assigned to individual institutional participants. A Training Coordinatory will work with the Account Administrator to design a comprehensive training program for each new institution. Training will be conducted on-site at the institution and will include having the Trainer present for the first days of trade settlement. The Trainer is available for any future training needs, including those arising from personnel changes.

Reporting

MSTC Participants have the ability to reconcile accounts on a same day basis using MSTC's Daily Activity, Net Position and National Institutional Delivery System (NIDS) reports.

Dividend/Interest reports allow projection of expected income and reconciliation on payable date. Dividend/Interest reports are available on ex-distribution, record and payable dates.

Reports are available via terminal, magnetic tape, CPU–CPU transmission or hardcopy.

Fee Schedule

Account Maintenance

Account maintenance fee..... $150.00/month

Safekeeping

All securities are held by MSTC in a fungible position by issue. Monthly safekeeping fees include income collection services and the processing of stock dividends.

Corporate Securities.....$2.50/Issue
Registered Municipal Bonds.....3.00/Issue
Bearer Municipal Bonds.....5.00/Issue

Book-Entry Transactions

Participants of MSTC are able to participate in the national institutional delivery system which is a trade recording, acknowledgement and automatic settlement system for institutional trades. The program allows partipants of MSTC to transact institutional trades with participants of MSTC and other depositories and settle those trades via an automatically-generated book-entry movement on Settlement Date.

The following fees apply to all Book-Entry transactions resulting from trade settlement or securities lending.

1-100 transactions/mo.....$6.00/Transaction
101-500 transactions/mo.....5.00/Transaction
501-1000 transactions/mo.....4.00/Transaction
1001-2000 transactions/mo...3.00/Transaction
Over 2000 transactions/mo...2.00/Transaction

Physical Transactions

Physical transactions include reorganizations, redemptions, deposits, withdrawals and transfers.

Physical Transaction.....$30.00/Item

Dividend Reinvestment Program

A participant maintaining securities on deposit as of Record Date may instruct MSTC to reinvest all or a portion of the Record Date position to take advantage of an issuing company's reinvestment option program.

General Dividend Reinvestment Program Fee.....$20.00/Security Issue

Special Instruction (if additional account detail is required beyond basic MCC/MSTC account):

a. Special breakdown of shares and cash-in-lieu breakdown...$4.00/Acct. Breakdown
b. Distribution of CIL by check for individual customer accounts....$6.00/Item

MSTC Communications System

Participants may use the terminal system in three ways: To obtain information regarding current MSTC inventory and activity (Inquiry), to retrieve MSTC reports (Report Retrieval), and to input instruction to MSTC for book-entry movements, trade affirmations, eligibility and withdrawal requests (Data Entry).

Port Access.....$100.00/Mo.

MSTC Reports

MSTC members can receive daily Activity, Net Position and National Institutional Delivery System reports via terminal, magnetic tape, CPU-to-CPU or hard copy.

Dividend/Interest reports are available on ex-distribution, record, and payable dates via terminal or hard copy.

File Transmission Service

The File Transmission Service (FTS) is CPU-to-CPU interface between MSTC and the computers of participant firms of their service bureaus. It makes processing smoother and more efficient by replacing tape handling. The time required to receive/submit and process data is also decreased.

	Daily	Weekly	Monthly	Upon request. (testing) [1]
Input (all charges per month)				
NIDS	No Charge	N.A.	N.A.	No Charge
Book-entry Deliveries	No Charge	N.A.	N.A.	No Charge
Output (all charges per month)				
Activity	$165.00	N.A.	N.A.	$75.00
Net Position	165.00	125.00	75.00	75.00
Net Position/Activity	275.00	N.A.	N.A.	75.00
Registered Masterfile Updates	165.00	N.A.	N.A.	75.00
Registered & Bearer Masterfile (FTP only)	N.A.	200.00	75.00	75.00
NIDS	165.00	N.A.	N.A.	75.00

[1] Includes settlement month end, calendar month end.

Tape Input/Output Service

The files listed within the FTS section are also available via machine-readable magnetic tapes. Tapes may be mailed or delivered/received via messenger to/from our New York or Chicago offices. Tape input is free. Tape output charges are the same as listed above for FTS.

Microfiche Service

Participants may request that microfiche copies of activity and net position reports be produced on a daily basis. These microfiche reports are distributed on the second day after activity and can be used for reconciliation and reference purposes.

Per microfiche card (Net Position Report, Activity Report, Security Glossary).....$3.50/Card
Duplicate additional cards.....1.25/Card

Pass Through Charges (rebilled expenses)

Pass through charges include but are not limited to the following:

- Courier/shipping charges
- Telephone bills
- Communications equipment rental
- Transfer agent fees
- Tymnet communications usage

MSTC Participant Fund Deposit

MSTC requires an initial Participant Fund deposit of $5,000. The initial deposit MUST be in cash. Future MSTC Participant Fund deposits may be requested based upon a Participants activity. Additional deposits will be calculated as follows: 3 percent of the daily average cash settlement entries.

Please refer to Midwest Securities Trust company Article VI, rule 2, section 1 for a more detailed explanation of the participant Fund.

Monthly Account Minimum

There is a monthly minimum for each account. Account minimums are determined by the number of accounts maintained at MSTC. Pass through charges are in addition to the account minimum.

1 account.....$2,000
2 accounts.....$1,500 for each account
3 accounts.....$1,000 for each account
4 or more accounts.....$750 for each account

Per microfiche card (Net Position Report, Activity Report, Security Glossary).....$3.50/Card
Duplicate additional cards.....1.25/Card

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3 accounts.....$1,000 for each account
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[Release No. 34-28843; File No. SR-PSE-87-19]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving a Program Relating to the Appointment of Specialist Units, the Evaluation of Specialist Performance, and the Allocation and Reallocation of Specialty Stocks

I. Introduction and Administrative History

A. Introduction

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), on June 18, 1987, a proposed rule change to approve permanently its specialist appointment and evaluation pilot program. Notice of filing of the proposed rule change and its subsequent amendment was provided by the issuance of a Commission release and by publication in the **Federal Register**.[3] The Commission received no comments on the proposed rule change.[4] This order permanently approves the pilot program.

B. Administrative History

The rules governing the Exchange's specialist appointment and evaluation program were originally approved by the Commission on a pilot basis on May 27, 1981.[5] The pilot rules were amended on March 1, 1983,[6] and the Exchange subsequently revised the guidelines governing the evaluation measures employed by the Exchange when evaluating specialist performance.[7]

Furthermore, the operation of the program has been extended eight times since the expiration of the initial one-year pilot period.[8] Most recently, on July 16, 1988,[9] the Commission extended the pilot indefinitely until the Commission completed its review of the PSE's specialist performance evaluation pilot program in conjunction with other securities exchanges' similar programs.[10]

II. Description of the Proposal

A. Introduction

The Exchange is proposing to adopt on a permanent basis its pilot program governing the appointment and registration of specialists, the evaluation of specialist performance, and the allocation and reallocation of specialty stocks.[11] Under the pilot program, PSE Rule 5.27 governs the appointment and registration of specialist units, while Rule 5.37 generally governs the evaluation of specialist performance and the allocation and reallocation of specialty stocks. In particular, Rules 5.27(d) and 5.37(a) establish three measures of specialist performance: (1) a National Market System ("NMS") quote performance measure, (2) a Specialist Evaluation Questionnaire Survey ("Questionnaire"), and (3) a Securities Communication Order Routing and Execution System ("SCOREX") limit order acceptance performance measure. These three performance measures are then utilized by the Exchange's Equity Allocation Committee ("Allocation Committee")[12] in its overall specialist evaluations. The terms of the entire pilot program rules are discussed below.

B. Appointment and Registration of Specialist Units

PSE Rule 5.27 governs the appointment and registration of specialists. Subject to approval by the Board, the Joint Equity Floor Trading Committee ("Trading Committee")[13] appoints registered specialists that satisfy established criteria.[14] In order to

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[1] 15 U.S.C. 78s(b) (1988).

[2] 17 CFR 240.19b-4 (1990).

[3] See Securities Exchange Act Release No. 24800 (August 14, 1987), 52 FR 32372 (August 27, 1987) (notice of filing and order granting partial accelerated approval of Amendment No. 1 to File No. SR-PSE-87-19). The complete texts of the original proposal and Amendment No. 1 are available at the PSE's Office of the Secretary and at the Commission's Public Reference Section.

[4] Although the Commission did not receive any comments in connection with File No. SR-PSE-87-19, the Exchange did receive several comments from its members in connection with its earlier related filings. These comments were discussed in the Commission releases accompanying the relevant filings. See, *e.g.*, Securities Exchange Act Release No. 22720 (December 16, 1985), 50 FR 52398 (December 23, 1985) (notice of filing of File No. SR-PSE-85-34); Securities Exchange Act Release No. 21578 (December 18, 1984), 49 FR 50349 (December 27, 1984) (order approving File No. SR-PSE-84-18); and Securities Exchange Act Release No. 19555 (March 1, 1983), 48 FR 9722 (March 8, 1983) (order approving File No. SR-PSE-82-15).

[5] See Securities Exchange Act Release No. 17818 (May 27, 1981), 46 FR 30016 (June 4, 1981) (order granting accelerated approval to File No. SR-PSE-81-05, as amended).

[6] See Securities Exchange Act Release No. 19555 (March 1, 1983, 48 FR 9722 (March 8, 1983) (Order approving File No. SR-PSE-82-15, amending and extending the PSE's specialist appointment and evlauation pilot program).

[7] See Securities Exchange Act Release No. 22895 (February 12, 1986), 51 FR 6190 (February 20, 1986) (order approving File No. SR-PSE-85-34, amending and extending the PSE's specialist appointment and evaluation pilot program).

[8] See, *e.g.*, See Securities Exchange Act Release No. 25372 (February 18, 1988), 53 FR 5670 (February 25, 1988) (notice of filing and order granting accelerated approval of File No. SR-PSE-87-32); Securities Exchange Act Release No. 24800 (August 14, 1987), 52 FR 32372 (August 27, 1987) (notice of filing and order granting partial accelerated approval of Amendment No. 1 to File No. SR-PSE-87-19); Securities Exchange Act Release No. 22895 (February 12, 1986), 51 FR 6190 (February 20, 1986) (order approving File No. SR-PSE-85-34); Securities Exchange Act Release No. 22513 (October 7, 1985), 50 FR 41776 (October 15, 1985) (notice of filing and order granting partial accelerated approval of File No. SR-PSE-85-29); Securities Exchange Act Release No. 21076 (June 21, 1984), 49 FR 26331 (June 27, 1984) (notice of filing and order granting partial accelerated approval of File No. SR-PSE-81-10); Securities Exchange Act Release No. 19555 (March 1, 1983), 48 FR 9722 (March 8, 1983) (order approving File No. SR-PSE-82-15); and Securities Exchange Act Release No. 19385 (December 30, 1982), 48 FR 918 (January 7, 1983) (notice of filing and order granting accelerated and temporary approval of File No. SR-PSE-82-15).

[9] See Securities Exchange Act Release No. 25943 (July 26, 1988), 53 FR 29100 (August 2, 1988) (notice of filing and order granting accelerated approval of File No. SR-PSE-88-13, extending the PSE's specialist appointment and evaluation pilot program indefinitely).

[10] For example, the Commission recently approved similar proposed rule changes filed by the New York Stock Exchange ("NYSE"), the American Stock Exchange ("Amex"), the Midwest Stock Exchange ("MSE"), and the Philadelphia Stock Exchange ("Phlx"). See Securities Exchange Act Release No. 27803 (March 14, 1990), 55 FR 10740 (March 22, 1990) (order approving File No. SR-NYSE-88-32); Securities Exchange Act Release No. 27455 (November 22, 1989), 54 FR 49152 (November 29, 1989) (order approving File No. SR-Amex-83-27); and Securities Exchange Act Release No. 27846 (March 26, 1990), 55 FR 12084 (March 30, 1990) (order approving File No. SR-MSE-87-13).

[11] Stocks are initially allocated on the PSE pursuant to Article IV, section 5(b) of the Exchange's Constitution. In order to formalize its current initial allocation procedures, the Commission expects the PSE to submit to the Commission as proposed rule changes the policies and standards governing such allocations.

[12] Article IV, section 5(a) of the PSE's Constitution establishes the composition and duties of the Exchange's Allocation Committee. The Allocation Committee is comprised of floor members or office and/or office allied members; two persons associated with the same specialist firm may not serve on the Allocation Committee at the same time; specialists may not be on the Committee.

[13] Article IV, Section 6 of the PSE's Constitution establishes the duties of the Exchange's Trading Committee.

[14] Specifically, an individual applying for registration as a PSE specialist either (1) must have served as a registered specialist on the Exchange

Continued

qualify for registration as a specialist in a security, a specialist applicant is required to function in a market making capacity at a specialist post on one of the Exchange's equity trading floors [15] for a minimum period of three months, during which time the applicant must perform primary market-making activities in at least one issue.

The Exchange's Allocation Committee evaluates the applicant's market-making performance after the first 30 days of the trial period and again 45 days later. The performance review is based upon the results of completed floor broker Questionnaires and scores for NMS quote performance and SCOREX limit order acceptance performance,[16] as well as any written comments solicited or received from other floor members.[17] Based upon its assessment of the applicant specialist's performance during the three month trial period, the Allocation Committee makes a recommendation to the Trading Committee, which will then recommend to the Board approval or disapproval of the application for appointment as a registered specialist.[18]

C. Evaluation of Specialist Performance

PSE specialists are evaluated on a quarterly basis by the Allocation Committee, using a combination of three performance measures—NMS quote performance results, SCOREX limit order acceptance performance results, and Questionnaire scores. The former two rating measures provide the Exchange with objective data to evaluate specialist performance, while the latter is a subjective measure of specialist performance. Each specialist receives a rating of 0–100% on each of the three measures of performance. The three separate ratings are accorded weights of 45%, 10%, and 45%, respectively, and are then consolidated into one overall rating.

1. National Market System Quote Performance

The NMS quote performance rating enables the PSE to evaluate objectively a specalist's ability to attract order flow to the Exchange in dually-traded securities. Under the current pilot program, the Exchange assesses the percentage of times in a given quarter that a specialist's bid and/or offer is equal to or greater than the best bid or offer in the consolidated quote system for each dually-traded security.

A specialist is evaluated on the basis of its ability to quote a 500 share market or the equivalent of the primary market, whichever is less, with a 200 share minimum, 40% of the time.[19] If the percentage achieved by the specialist is 40% or more, the specialist receives a 100% rating (*i.e.*, a perfect score) in this measure of performance and is entitled to the full 45 points in its overall score (based on the relative weighting factors). If, however, the percentage obtained by the specialist is less than 40%, the percentage applied to the weighting factor would be calculated by taking the percentage obtained and dividing it by 40%.[20]

2. Specialist Evaluation Questionnaire Survey

The Exchange requests all equity floor brokers to complete a Questionnaire each quarter to assess the performance for all specialists on the Exchange's equity trading floors.[21] The current Questionnaire is composed of four questions designed to evaluate specialist market-making functions on a regional securities exchange, including the communication of permissible market information, administrative functions related to executed trades, fair and efficient order handling, and market quality as measured by depth, continuity, and other measures of a fair and orderly market.

The Questionnaire explains that each question is graded on a scale of 1 to 10 (*i.e.*, weak to outstanding). In addition, the Exchange solicits comments from the floor broker(s) evaluating a specalist where the broker assigns the specialist a grade of 1–2 or 9–10.[22] Each question is rated on an equal scale in determining the total score. The total Questionnaire score for each specialist is determined by calculating the number of points received as a percentage of the maximum points possible. The maximum points possible are calculated on the basis of questions answered in order to avoid penalizing a specialist in cases where responses are not received. The Exchange transmits to member firms the survey scores of all specialists on the appropriate trading floor, including the firm's own registered specialist(s), in order to provide specialist firms with the opportunity to compare its specialist's or specialist's performance to that of other specialists on the trading floor.[23]

3. SCOREX Limit Order Acceptance

All specialists are required to accept a percentage of SCOREX limit orders to receive points for this measure of performance. PSE specialists are graded on a sliding scale according to their performance in accepting SCOREX limit orders. Specialists receive points

within three years of the date of application, or (2) within two years of the date of application, must have worked as a market maker or floor broker on a national securities exchange or in the over-the-counter market for a minimum of three months and must achieve a passing grade of at least 80% on the Exchange's written examination.

[15] The PSE maintains two equity trading floors—one in Los Angeles, CA and the other in San Francisco, CA.

[16] See *infra* Section II.C.

[17] The three month performance review may be waived by the Allocation Committee if it determines that the specialist applicant possesses sufficient knowledge, skill, and experience with regard to specialist functions and activities that it may immediately recommend approval of the member's application to the Trading Committee.

[18] If the Trading Committee intends to recommend disapproval of the member's application to the Board, it must provide the applicant with prior written notice of its intentions. The notice must explain the basis of the Trading Committee's decision, as well as notify the applicant of his right to a hearing on the evaluation of his performance. See PSE Rule 5.27 (f)–(k).

[19] The PSE revised the guidelines for the NMS Quote Performance rating in 1986. See supra note 7. Under the earlier system, a specialist was evaluated on the basis of his quoting a 200 share market 50% of the time. See File No. SR–PSE–85–34. See also letter from Kenneth J. Marcus, Senior Staff Attorney, Equity Compliance, PSE, to George Scargle, Staff Attorney, Division of Market Regulation, SEC, dated May 31, 1990.

[20] For example, if in a given quarter a specialist achieves a rating of 32% on its NMS quote performance results, then the specialist's bid and/or offer was equal to or better than the primary market bid and/or offer 32% of the time for the relevant quarter. The score of 32 divided is then divided by 40, which equals 80%. The Exchange would then multiply the 80% ratio by a factor of 45 (*i.e.*, the maximum score the specialist can receive for this performance measure), which is equal to 36. Thus, of the maximum 45 points for this measure, the specialist would be credited with a total of 36 points.

[21] A specialist Questionnaire may be completed by a PSE equity floor broker subject to the following conditions: (1) The broker must have traded with the specialist on a regular basis during the calendar quarter for which the survey is being conducted; (2) the broker must believe that he can objectively answer the survey questions and fairly evaluate the specialist's performance (if he concludes he cannot do so, he is permitted to refrain from responding to any question for which he feels he cannot provide an objective answer); (3) the broker must agree to provide the Allocation Committee, in confidence, with explanations of his answers; (4) the broker is advised that his answers are confidential; (5) the broker is requested to consider only trading activity occurring within the quarter for which the evaluation is being prepared; (6) the broker may not be affiliated with the same firm as a specialist for which he is completing the evaluation; and (7) the broker is informed of the purposes of the survey, *i.e.*, to improve specialist performance and reallocate stock if a specialist's performance is determined to be inadequate. *See* File No. SR–POSE–85–34.

[22] The Exchange provides an additional blank page for comments and suggestions for improving the quality of the posts.

[23] With the exception of the firm's own specialist(s), the Questionnaire scores provided to the firms do not reveal the identity of the specialist receiving the scores. *See* Securities Exchange Act Release No. 19555 (March 1, 1983), 48 FR 9722 (March 8, 1983), note 4 (order approving File No. SR–PSE–82–15).

monthly on a scale of one to five (1–5) based upon their percentage of SCOREX acceptance above 70%.[24] The accumulation of points in each of the three months in any given quarter is added to obtain a total score for this measure, which then makes up 10% of the overall performance score.[25]

D. Substandard Specialist Performance Reallocations

The PSE has adopted standards to evaluate specialist performance, set forth in PSE Rule 5.37, that would identify specialists whose performance was particularly poor relative to the performance of other specialists. Each specialist receives an overall evaluation score each quarter from the Allocation Committee based upon NMS quote performance, the results of the floor broker Questionnaire, and SCOREX limit order acceptance performance. Under the PSE's performance evaluation standards, any specialist whose performance is ranked in the bottom 10% of all registered specialists on the trading floor as determined by the overall evaluation scores of all specialists is subject to a performance improvement action, and, potentially, reallocation proceedings.

A specialist who is ranked in the bottom 10% of all specialists in any one quarter will be deemed to have performed unsatisfactorily and will be requested [26] to meet informally with the Allocation Committee or a designated panel thereof for purposes of discussing the specialist's evaluation scores, to discuss any mitigating factors that could account for the substandard performance, and to develop remedial measures designed to improve the specialist's performance.[27]

If a specialist is ranked in the bottom 10% of all other registered specialists on his trading floor during any two out of four consecutive quarterly evaluations, the specialist is deemed to have performed below acceptable standards and is requested [28] to appear a second time before the Allocation Committee, or a designated panel thereof, to explain his performance.[29] If the specialist adequately demonstrates that there are mitigating circumstances that either account for its substandard performance or demonstrates that it has substantially improved its scores relative to the two most recent scores, no formal reallocation proceedings would be commenced.

On the other hand, if the specialist fails to convince the Allocation Committee that mitigating circumstances exist that demonstrate substantial improvement of or reasonable justification for the specialist's most recent evaluation score, the Allocation Committee would commence formal reallocation proceedings.[30] If formal reallocation proceedings are commenced, the Allocation Committee and the specialist have the right to be represented by counsel and to have technical consultants present at the hearing.[31]

After the Allocation Committee determines to reallocate a specialist's stock, it will identify which stock(s) are to be reallocated. This selection process involves, among other things, a preliminary decision as to whether the Allocation Committee will reallocate an issue solely traded on the PSE or a dually-traded issue. In each instance the Allocation Committee's decision involves a review of the performance data included in the hearing record. Subject to the affected specialist's right of appeal and possible Board review, the Allocation Committee's decision to reallocate specialty stock(s) becomes final ten days after the affected specialist is notified of the decision.

III. Discussion

The Commission has considered carefully the terms and operation of the PSE's specialist appointment and evaluation and specialist post expansion pilot program, and finds, for the following reasons, that the Exchange's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[32]

The Commission strongly supports efforts by the PSE to encourage quality specialist performance through its specialist appointment and performance evaluation process.[33] In this regard, the PSE's proposal is designed to ensure fair and impartial evaluations of specialist performance on the Exchange. The Exchange's development of quasi-relative standards of specialist performance enhances the effectiveness of the PSE's program. Although true relative performance standards are the preferable means to evaluate the comparative performance of specialists

[24] Thus, a score below 70% = zero; 70%–75% = 1 point; 76%–81% = 2 points; 82%–87% = 3 points; 88%–93% = 4 points; and 94%–100% = 5 points. See File No. SR–PSE–85–34.

[25] For example, if in a given quarter a specialist earns a maximum number of 15 points for its SCOREX limit order acceptance performance, the 15 points would translate into 10% of the overall performance score. See letter from Kenneth J. Marcus, Senior Staff Attorney, PSE, to George Scargle, Staff Attorney, SEC, Division of Market Regulation, dated May 31, 1990.

[26] If, after receiving the requisite notice, a registered specialist refuses or otherwise fails without reasonable justification to meet with members of the Allocation Committee, the Allocation Committee may take appropriate action to enforce compliance, including the commencement of formal disciplinary proceedings pursuant to Rule 10 of the Exchange's rules.

[27] During the meeting, the specialist is afforded an opportunity to comment on the Allocations Committee's evaluation of its performance, any mitigating factors that would account for its performance, and any other facts or information relevant to the specialist's overall scores. One of the mitigating circumstances the Allocation Committee can consider is whether the specialist received a score of 80 or above on the overall evaluation. Telephone conversation between David Semak, Vice President, Regulation, PSE, and Howard Kramer, Assistant Director, Division of Market Regulation, SEC, on November 20, 1990. See also letter from David Semak to Howard Kramer, dated November 2, 1990. Prior to the meeting's close, the specialist is informed of the consequences of it continued unsatisfactory performance, including the potential reallocation of specialty stocks. Because the meeting is informal, counsel for both the Allocation Committee and the registered specialist are excluded, and formal rules of evidence do not apply.

[28] If, after receiving the requisite notice a registered specialist refuses or otherwise fails without reasonable justification to meet informally with members of the Allocation Committee, the Allocation Committee may take appropriate action to enforce compliance, including the commencement of formal disciplinary proceedings pursuant to Rule 10 of the Exchange's rules and/or the commencement of formal proceedings for the evaluation of specialist performance.

[29] The Allocation Committee is required to maintain detailed minutes of the informal meeting and is required to include in the minutes the Committee's findings and the basis and rationale for its decision to commence or not to commence formal reallocation proceedings.

[30] The Allocation Committee also has the authority to bypass the second informal proceeding and commence formal reallocation proceedings after a specialist's second quarter of substandard performance within a rolling twelve-month period. PSE Rule 5.37.

[31] The Allocation Committee is required to provide written notice to the specialist of the basis for its determination that his performance is unacceptable, of his right to a hearing on his performance evaluation, and of his right to obtain Board review of the Allocation Committee's decision to terminate his registration as a specialist or to reallocate any stock(s). A transcript must be kept of the hearing proceedings.

[32] The Commission incorporates by reference its earlier discussions in the relevant releases accompanying all aspects of the pilot program. See *supra* notes 4–8.

[33] The Commission notes that the PSE currently is conducting an extensive review of its specialist evaluation program and will submit the changes to the Commission as a proposed rule change when its review is completed. One of the changes the PSE plans to make to its specialist evaluation program is the addition of another objective standard of market-making performance. PSE also plans to revise the weighting of its measures of specialist performance. See letter from David Semak, Vice President, Regulation, PSE, to Howard Kramer, Assistant Director, Division of Market Regulation, SEC, dated November 2, 1990. The PSE also has agreed to consider adding a rule that would allow the immediate reallocation of a specialist's stock in egregious situations. Telephone conversation between David Semak and Howard Kramer, November 20, 1990.

on a national securities exchange,[34] the PSE's quasi-relative standards are a positive step in the direction.

Likewise, the Exchange's use of both subjective and objective measures of specialist performance to monitor and identify those specialists whose performance, either on an isolated or continuous basis, falls below acceptable standards contained in the Exchange's review procedures results in a more comprehensive and meaningful evaluation program. As described above, the PSE proposes to use two objective measures of specialist performance: NMS quote performance and SCOREX limit order acceptance performance.[35] The Commission believes that the NMS quote performance measure should help the Allocation Committee to evaluate the ability of specialists to quote a meaningful and competitive market in dually-traded securities. Similarly, the Commission believes that the SCOREX limit order acceptance measure should help the Allocation Committee to evaluate the performance of PSE specialists in executing limit orders in dually-traded stocks.[36]

With respect to the Exchange's subjective measure of specialist performance, the floor broker Questionnaire, the Commission believes that such specialist evaluation questionnaires completed by floor brokers, which have been accepted industry-wide with Commission approval,[37] are a valuable source of information for purposes of evaluating specialist performance and allocating and reallocating specialty securities. The Commission notes that floor brokers have direct and frequent interaction with specialists, and thus are especially qualified to rate specialist performance. Moreover, the fact that their ratings are "subjective" does not diminish the credibility of floor brokers as evaluators. The Questionnaire addresses the bias inherent to situations where a floor broker would be rating the performance of a specialist affiliated with his firm through the automatic exclusion of these ratings from a specialist's performance evaluation. Additionally, the wording of the Questionnaire is sufficiently precise and understandable to provide clear guidance to floor brokers and specialists. Given the mixture of securities traded on the PSE floor, the questions cover the main functions of a regional exchange specialist—dealer, broker, and customer service functions—and the Commission believes that the content of the Questionnaire is a fair measurement of specialist performance.[38]

The combination of the Questionnaire and the NMS quote performance and SCOREX limit order acceptance measures of specialist performance should identify performance weakness by specialists and should be useful to motivate specialists to improve their performance. Moreover, the Commission believes that these three measures reflect the obligations of a specialist on a regional securities exchange. Thus, the Commission finds these three measures are satisfactory means of performance evaluation and thus are consistent with the Act.

The Commission also believes that the PSE's proposal adequately provides fair procedures for specialists subject to a performance improvement action and/or reallocation. The reallocation procedures set forth in Rule 5.37 of the PSE's rules provide adequate notice to specialists of possible courses of Allocation Committee action for repeated instances of poor performance. Moreover, the Rule 5.37 formal reallocation procedures provide sufficiently detailed procedures with adequate safeguards—including the right to be represented by counsel and to have technical consultants present at the hearing, the maintenance of written hearing transcripts, an opportunity to appear before the Allocation Committee to present their case, and a right of appeal to the Exchange's Board—that must be followed before a specialty stock is reallocated for unsatisfactory performance.

Furthermore, the Commission believes that the Exchange's specialist evaluation, allocation and reallocation procedures can serve as an effective incentive for specialist units to maintain high levels of performance and market quality in order to be considered for, and ultimately awarded, additional listings.[39] This in turn can benefit the

[34] The Commission has long encouraged the adoption of relative performance measures by all stock exchanges, *i.e.*, performance measures that automatically subject specialists that fall below a predetermined threshold of performance to a special performance review by the appropriate exchange authority. See, *e.g.*, SEC, Division of Market Regulation, The October 1987 Market Break (February 1988) ("Market Break Report"), at xvii and 4–28 to 4–29.

[35] As stated above, the Commission has long favored the incorporation of objective measurements into the specialist evaluation process as a supplemental performance measure to the floor broker evaluations. See Market Break Report at xvii; Securities Exchange Act Release No. 25861 (May 9, 1988), 53 FR 17287 (May 16, 1988) (order approving File No. SR–NYSE–87–25, revisions to the NYSE's specialist performance evaluation and improvement process); Securities Exchange Act Release No. 27455 (November 22, 1989), 54 FR 49152 (November 29, 1989) (order approving File No. SR–Amex–83–27, an Amex proposal relating to equity specialist performance, allocation, and reallocation procedures); and Securities Exchange Act Release No. 27846 (March 26, 1990), 55 FR 12084 (March 30, 1990) (order approving File No. SR–MSE–87–13, MSE modifications to co-specialist evaluation questionnaire).

[36] As stated *supra*, the PSE plans to add another objective market-making standard to its specialist evaluation program. The Commission encourages the PSE to develop further objective measurements as a supplement to its Questionnaire.

[37] See, *e.g.*, Securities Exchange Act Release No. 27846 (March 26, 1990), 55 FR 12084 (March 30, 1990) (order approving File No. SR–MSE–87–13, a proposed rule change relating to modifications to the MSE's co-specialist evaluation questionnaire); Securities Exchange Act Release No. 27675 (February 5, 1990), 55 FR 4922 (February 12, 1990) (order approving File No. SR–NYSE–89–32, a proposed rule change relating to revisions in the NYSE's Specialist Performance Evaluation Questionnaire ("SPEQ")); Securities Exchange Act Release No. 27656 (January 30, 1990), 55 FR 4296 (February 7, 1990) (order approving File No. SR–BSE–90–01, a proposed rule change extending the specialist performance evaluation pilot program on the Boston Stock Exchange); Securities Exchange Act Release No. 27455 (November 22, 1989), 54 FR 49152 (November 29, 1989) (order approving File No. SR–Amex–83–27, a proposed rule change relating to equity specialist performance, allocation and reallocation procedures on the Amex); and Securities Exchange Act Release No. 25388 (February 23, 1988), 53 FR 6725 (March 2, 1989) (order indefinitely extending File No. SR–Phlx–87–42, a proposed rule change relating to pilot rules governing specialist appointments, allocations, evaluations, reallocations, and equity books and options classes transfers).

[38] As noted *supra*, the PSE currently is conducting a review of its specialist evaluation program. As part of that review, the PSE is considering changes to the Questionnaire. While the Commission believes that the four questions on the current Questionnaire provide an adequate measure of specialist performance, the Commission believes that the PSE should examine whether additional questions should be developed in order to examine more comprehensively the functions of a regional exchange specialist. Any such changes would have to be submitted to the Commission for review along with the other revisions to the specialist evaluation program pursuant to Section 19(b) of the Act.

[39] The Commission continues to believe that the key criterion for allocating stocks to specialist units should be specialist performance as measured by the Questionnaire and objective performance measures. This will not only help ensure that stocks are allocated to the top specialists who will make the best markets, but should also provide an incentive for improved specialist performance. See Securities Exchange Act Release No. 27803 (March 14, 1990), 55 FR 10740 (March 22, 1990) (order approving File No. SR–NYSE–88–32). The PSE stated that this has been the PSE's practice for years when allocating and reallocating stocks. The Exchange has represented that it will submit a proposed rule change to the Commission that codifies its existing policy of regarding performance as the predominant key component in the allocation and reallocation of specialty stocks. See letter from David P. Semak, Vice President Regulation, PSE, to Howard Kramer, Assistant Director, SEC, Division of Market Regulation, dated November 2, 1990.

execution of public orders and promote competition among exchanges. The Commission fully supports the PSE's efforts to develop meaningful and effective specialist evaluation, allocation, and reallocation procedures.

The Commission believes that the PSE's specialist appointment guidelines are appropriate. In particular, the Commission believes that Allocation Committee consideration of the floor broker Questionnaire, as well as the applicant's NMS quote performance and SCOREX limit order acceptance performance, should ensure that the Trading Committee reviews a broad range of factors in determining whether an applicant should be awarded a specialist franchise. In addition, the Commission believes that the PSE's rules establish fair specialist appointment procedures, including a right of appeal to the Exchange's Board, which provide specialist applicants with adequate procedural safeguards.

Accordingly, after careful consideration, the Commission believes that the PSE's proposal to adopt permanently its revised specialist appointment, evaluation, and reallocation procedures is consistent with the Act. In particular, the Commission believes that the Exchange's specialist evaluation procedures should provide the Exchange with an accurate and fair mechanism to identify and correct poor specialist performance.[40] The Commission also believes the PSE's specialist appointment procedures provide the PSE with a clear, adequate, and fair means to appoint specialists on the Exchange's equity trading floors. Finally, the Commission notes that it has not received one single comment in response to the relevant Federal Register notices on any aspect of the pilot program in the entire ten years of the pilot's operation.[41]

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[42] in that it is designed to promote just and equitable principles of trade and strengthen the Exchange's specialist system as well as further investor protection and the public interest in fair and orderly auction markets on national securities exchanges.

[40] The PSE has provided the Commission with data regarding the operation of its specialist evaluation program. The Commission has reviewed the date in light of the proposal by the PSE for permanent approval of its specialist allocation and evaluation rules. Based on the information provided during the pilot program, the Commission believes that the PSE's proposed rules for specialist evaluation provides an adequate regulatory framework for identifying, and responding to, poor specialist performance.

[41] But see note 4 *supra*.

IV. Conclusion

The Commission has reviewed carefully the proposed rule change and has concluded that it provides for adequate and proper evaluation procedures for purposes of identifying and correcting poor specialist performance and for purposes of rewarding superior specialist performance. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and, in particular, the requirements of Section 6.[43]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[44] that the proposed rule change (SR–PSE–87–19) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[45]

Dated: February 1, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–2958 Filed 2–6–91; 8:45 am]

BILLING CODE 8010–01–M

[42] 15 U.S.C. 78f(b)(5) (1988).

[43] 15 U.S.C. 78f (1988).

[44] 15 U.S.C. 78s(b)(2) (1988).

[45] See 17 CFR 200.30–3(a)(12) (1990).

[Release No. 34–28838; File No. SR–PHLX 90–23]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Dual Affiliations of Floor Members and Other Market Participants

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 July 31, 1990, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX, pursuant to Rule 19b–4 of the Act, proposes a new Options Floor Procedure Advice ("OFPA"), "F–9 Dual Affiliations," based on existing PHLX Rules 793, 1014, 1020 and 1064(c). The following constitutes the text of the proposed OFPA F–9 and accompanying fine schedule.

F–9 Dual Affiliations

Dual Affiliations must be filed in writing with the Exchange's Office of the Secretary as provided by Exchange Rule 793. Additionally, floor members/participants for whom dual affiliation filings are necessary shall adhere to the following requirements:

(i) A copy of the dual affiliation filing required by the Office of the Secretary shall include an explanation of all agreed upon forms of compensation between either dual affiliate firm and the individual floor member/participant and between the two firms. In each case where softdollar compensation is made, a good faith dollar value shall be estimated by the firms.

(ii) A Registered Options Trader is prohibited from receiving communications about trading interests or orders from an affiliated floor broker's customers prior to the respective trading crowd receiving the same information. In this regard, the Registered Options Trader is prohibited from answering telephones at the affiliate's post, except that he may access a telephone at the post to communicate with associates of his Registered Options Trading firm.

(iii) Any exchange of interests to trade between a Registered Options Trader or his firm and an affiliated floor broker firm will require that the same information be provided to the respective trading crowd and shall also require that the crowd be advised that the order is presented for execution under Rule 1964(c)—Solicited Orders.

Fine Schedule

1st Occurrence	$250.00
2nd Occurrence	$500.00
3rd Occurrence	Sanction is discretionary with Business Conduct Committee

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Propoosed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory 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 section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Part (i) of the proposed OFPA F–9 is based on PHLX Rule 793, which prohibits certain members and participants from maintaining dual or multiple affiliations without disclosure to the Exchange and approval in writing from each member or participant organization affected. Moreover, Rule 793 provides that "the Exchange may disapprove multiple affiliations which are inconsistent with Exchange standards of financial responsibility, operational capability, or compliance responsibility." Furthermore, Commentary .01 to Rule 793 requires a member or participant organization to file with the Office of the Secretary of the Exchange notice of a multiple affiliation detailing the business purpose of this arrangement, the person at each organization who will supervise the conduct of the dually affiliated member/participant for compliance with PHLX by/laws and rules, and sufficient information for the Exchange to determine whether one person registers with more than one organization. The notice also must contain each organization's written approval of the affiliation.

The PHLX hereby proposes that the submissions made pursuant to Rule 973 will disclose all agreed upon forms of compensation between each affiliate firm and the individual, as well as between the two firms. Where "softdollar" compensation is made, the Exchange proposes to require that a good faith dollar value be estimated. The PHLX beleives that the additional disclosure of compensation arrangements will assist in the determination of whether a multiple affiliation is inconsistent with Exchange standards of financial responsibility, operational capability, and compliance responsibility as enumerated in Rule 793. More specifically, the PHLX believes that the form and amount of compensation related to a multiple affiliation is a critical aspect of determining whether a conflict of interest exists.

PHLX Rule 1014 provides that specialists and Registered Options Traders ("ROTs") are assigned to certain options classes and charged with the duty to maintain fair and orderly markets in those options classes. In order to ensure compliance with this mandate, the PHLX has imposed certain trading requirements. Rule 1014(e) prohibits a ROT from initiating an options transaction while on the floor in any account in which he has an interest and executing as a floor broker an off-floor order in options on the same underlying interest during the same trading session.

Pursuant to the grant of authority in Rule 1014(e), which prohibits a ROT from simultneously acting as a floor broker, the PHLX proposes to adopt part (ii) of the Options Floor Procedure Advice. The PHLX believes that a prohibition against the communication of trading interests and customer orders between affiliated ROTs and floor brokerage units is necessary to the maintenance of a fair and orderly market. Specifically, in order to ensure that no such communication occurs, the proposed Advice prohibits a ROT from receiving communications about trading interests or orders from an affiliated floor broker's customers prior to the respective trading crowd receiving the same information and from answering telephones at an affiliate's post, except to contact his own Registered Options Trading firm. Part (ii) of the proposed Advice was specifically intended to thwart the following situation: a floor broker who is "hired" by a ROT firm to act as a ROT but continues to execute floor brokerage for his initial firm. Accordingly, this aspect of the proposed Advice serves as a "Chinese Wall" provision, similar to those enumerated in Rule 1020.

Part (iii) of OFPA F–9 provides that the trading crowd be informed of any exchange of interests to trade between a ROT and an affiliated floor brokerage unit. This provision is based on PHLX Rule 1064(c) relating to solicited orders. Rule 1064(c) provides that when an order is presented to the trading crowd which arose out of an expression of trading interests between two broker-dealers away from the crowd, the solicited order must be shown to the crowd along with any information given to the solicited member. Additionally, the participants in the trading crowd must be given a reasonable opportunity to respond to the order. The Advice proposes that an exchange of interests between a ROT and an affiliated floor brokerage firm triggers application of Rule 1064(c). Therefore, the Advice proposes that the same information that is exchanged between the two participants be communicated to the trading crowd. The PHLX believes that applying the provisions relating to solicited orders to such dually affiliated ROTs and floor brokers is necessary to ensure that these transactions are executed pursuant to just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any 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 its finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consent, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any 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 Copes 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 capiton above and should be submitted by [insert date 21 days form the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 30, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-2952 Filed 2-6-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17972; 812-7608]

The Advantage Government Securities Fund, et al.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: The Advantage Government Securities Fund, The Advantage Growth Fund, The Advantage High Yield Bond Fund, The Advantage Income Fund, The Advantage Special Fund (the "Funds"), and Boston Security Counsellors, Inc.

RELEVANT 1940 ACT SECTIONS: Order requested under section 17(d) and rule 17d-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Funds to deposit uninvested cash balances into a single joint account to be used to enter into repurchase agreements.

FILING DATE: The application was filed on October 10, 1990 and amended on January 2, 1991.

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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 26, 1991, and should be accompanied by proof of service on the applicants, 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 5th Street NW., Washington, DC 20549. Applicants, 60 State Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, at (202) 272-2190, or Jeremy N. Rubenstein, Branch Chief, at (202) 275-3030 (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.

Applicants' Representations

1. The Funds are registered open-end diversified management investment companies. Boston Security Counsellors, Inc. (the "Adviser") is the investment adviser to the Funds. Each Fund is authorized to invest in repurchase agreements.

2. The Funds often have uninvested cash balances in their accounts at their custodian bank that otherwise are not invested in portfolio securities. Such assets generally are invested in short-term liquid assets, including repurchase agreements. Presently, the Adviser must purchase such instruments separately on behalf of each Fund, which results in certain inefficiencies, increased costs, and limitations on the return that the Funds otherwise could achieve.

3. Applicants propose to deposit the uninvested cash balances remaining at the end of each trading day into a single joint account, the daily balance of which will be used to enter into short-term repurchase agreements. The joint account will not be distinguishable from any other account maintained by a Fund with the custodian bank except that monies from each Fund could be deposited in the custodian bank on a commingled basis. The account will not have any separate existence that will have indicia of a separate legal entity. The sole function of the account will be to provide a convenient way of aggregating what otherwise would be one or more individual daily transactions for each Fund. Applicants believe that each Fund's liability on any repurchase agreement purchased by the joint account will be limited to its interest in the repurchase agreement.

4. The Adviser will have no monetary participation in the joint account but will be responsible for investing Fund assets in the account, establishing accounting and control procedures, ensuring the equal treatment of each Fund, and ensuring that the assets of the Funds are held under proper bank custodial procedures. Each Fund will participate in the joint account on the same basis as every other Fund and in conformity with its fundamental investment objectives and policies.

5. In connection with the use of repurchase agreements, each of the Funds has established the same systems and standards. These include quality standards for issuers of the repurchase agreements and the requirement that the repurchase agreements be at least 100% collateralized at all times.

6. Applicants represent that any repurchase agreement transactions entered into through the joint account will comply with any existing and future positions taken by the Commission or its staff by rule, release, letter or otherwise relating to repurchase agreement transactions.

Applicants' Legal Analysis

1. Applicants submit that each Fund participating in the proposed joint account and the Adviser could be deemed a joint participant within the meaning of section 17(d) of the 1940 Act and that the proposed joint account could be deemed a joint enterprise or other joint arrangement within the meaning of rule 17d-1 under the 1940 Act.

2. Applicants represent that the joint account will save the Funds certain transaction fees, allow the Funds to negotiate higher rates of return, and reduce the possibility of errors by reducing the number of trades.

3. The board of trustees or board of directors of each fund has considered the proposed joint account and has determined that:

(a) The Fund will benefit by participating in the joint account,

(b) The proposed method of operating the joint account will not result in any conflict of interest among the joint participants,

(c) The benefits to the Adviser through reduced administrative costs and duties are incidental to the benefits to each Fund of higher returns and a more efficient means to administer investment transactions, and

(d) The operation of the joint account will be free of any inherent bias favoring one Fund over another.

4. Applicants believe that future participation in the joint account by one or more new series of the Funds and new investment companies for which the Adviser serves as investment adviser is desirable. Such future series or investment companies will be required to participate in the joint account on the same terms and conditions as the Funds have set forth herein.

Applicant's Condition

As an express condition of obtaining an exemptive order, applicants agree that the proposed joint account will operate subject to the following procedures:

1. A separate cash account will be established at the custodian bank into which each participating Fund will deposit its daily uninvested net cash balances. Each fund that has as a custodian a bank other than the bank at which the proposed joint account is

maintained and that wishes to participate in the joint account will appoint the latter bank as a sub-custodian for the limited purpose of receiving cash for deposit into the proposed joint account.

2. Cash in the joint account will be invested only in repurchase agreements collateralized by suitable U.S. Government obligations, i.e., obligations issued or guaranteed as to principal and interest by the government of the United States or by any of its agencies or instrumentalities, and satisfying the policies and guidelines of the Funds concerning repurchase agreements. Any such repurchase agreement will have, with rare exceptions, an overnight or over-the weekend duration, and in no event will it have a duration of more than seven days.

3. All investments held by the joint account will be valued on an amortized cost basis, the basis upon which each Fund values its investments in short-term money market instruments.

4. Each participating Fund subject to an exemptive order permitting valuation on the basis of amortized cost, or relying upon rule 2a–7 under the Act for that purpose, will use the average maturity of the joint account for the purpose of computing that Fund's average portfolio maturity with respect to the portion of its assets held in such account on that day.

5. In order to assure that there will be no opportunity for one Fund to use any part of a balance of the joint account credited to another Fund, no Fund will be allowed to create a negative balance in the joint account for any reason, although it will be permitted to draw down its entire balance at any time. Each Fund's decision to invest in the joint account will be solely at its option; a Fund will not be required either to invest a minimum amount or to maintain a minimum balance. Each Fund will retain the sole ownership rights to any of its assets invested in the joint account, including any interest payable on the assets invested in the joint account. Each Fund's investment in the joint account will be documented daily on the books of the Fund as well as on the books on the custodian bank.

6. Each Fund will participate in the income earned or accrued in the joint account and all instruments held in the joint account on the basis of the percentage of the total amount in the account on any day represented by its share of the account.

7. Under the general terms of each Fund's Investment Advisory Agreement ("Agreement"), the Adviser will administer the investment of the cash balances in and operation of the joint account and will not collect any separate fees for the management of the joint account. The operation of the joint account is not provided for specifically under each Fund's Agreement, but is covered under the general terms of each such Agreement.

8. The administration of the joint account will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder. The Funds currently are insured under a joint fidelity bond.

9. The board of trustees or board of directors of each of the Funds and any future Funds participating in the joint account will evaluate the joint account arrangements, and will continue participation in the account only if they determine that there is a reasonable likelihood that the participating Fund and its shareholders would benefit from continued participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–2953 Filed 2–6–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17968; 812–7651]

Baird Capital Development Fund, Inc., et al.

January 30, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Baird Capital Development Fund, Inc., Baird Blue Chip Fund, Inc. (collectively, the "Baird Mutual Funds"), and any open-end registered investment company which may hereafter be advised by Robert W. Baird & Co. Incorporated, or any of its affiliates, and offered at net asset value plus a sales load and in the same group of investment companies, as defined in Rule 11a–3 under the 1940 Act.

RELEVANT 1940 ACT SECTIONS: Exemption requested pursuant to section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) and from Rule 22c–1.

SUMMARY OF APPLICATION: Applicants seek an order that would permit each applicant to impose a contingent deferred sales load on certain redemptions of its shares with respect to which its front-end sales load was initially waived.

FILING DATE: The application was filed on December 13, 1990, and an amendment thereto was filed on January 29, 1991.

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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 26, 1991, and should be accompanied by proof or service on the applicants, 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Staff Attorney, at (202) 272–3043, or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representation

1. Each applicant is an open-end diversified management investment company organized under the laws of Wisconsin. Robert W. Baird & Co. Incorporated, a Wisconsin corporation (the "Distributor"), is a registered broker-dealer under the Securities Exchange Act of 1934 and serves as principal underwriter for applicants.

2. Applicants currently offer their shares for sale at net asset value plus a maximum front-end sales load of 5.75% of the offering price (6.10% of the net asset value) on single purchases of less than $50,000. The sales load is reduced on a graduated scale on single purchases of $50,000 and over.

3. Applicants propose to offer their shares for sale at net asset value plus a graduated front-end sales load on transactions involving less than $1,000,000, or such other amount as agreed to by the Distributor and applicants from time to time. For purchases of $1,000,000 or more, applicants will not impose a front-end sales load, thereby enabling purchasers

to have the proceeds of their purchase payments fully invested at the time the investments are made.

4. Applicants also propose to impose no front-end sales load when:

(a) A shareholder of an unrelated open-end investment company with a front-end sales load purchases shares of a Baird Mutual Fund with the proceeds from a redemption of shares of such unrelated open-end investment company made within 90 days of the purchase of shares of the Baird Mutual Fund, provided that the shareholder's application so specifies and is accompanied either by a copy of the redemption check of such unrelated open-end investment company or a copy of an account activity statement reflecting the redemption:

(b) A shareholder of an unrelated open-end investment company without a front-end sales load purchases shares of a Baird Mutual Fund with the proceeds from a redemption of shares of such unrelated open-end investment company within 90 days of the purchase of shares of the Baird Mutual Fund, provided that the shareholder's application so specifies and is accompanied either by a copy of the redemption check of such unrelated open-end investment company or a copy of an account activity statement reflecting the redemption, and further accompanied by an account activity statement or other evidence showing that the shareholder had previously owned such unrelated open-end investment company, if other than a money market fund, for at least 60 days and, if such unrelated company is a money market fund, that the shares of the money fund were purchased with the proceeds of an open-end investment company, other than a money market fund, that had been owned by the shareholder for at least 60 days; and

(c) Investment advisory clients (or affiliates of investment advisory clients) of the Distributor purchase shares of the Baird Mutual Funds.

5. With respect to (a) and (b) of the preceding paragraph, the front-end sales load will not be waived if the shareholder pays a deferred sales load or redemption fee (as such terms are defined in Rule 11a–3 under the 1940 Act) because in such situations the transaction may be prohibited under section 11(a) of the 1940 Act, absent an order of the Commission, as an exchange effected on a basis other than relative net-asset values. Applicants will take such steps as may be necessary to determine that the shareholder has not paid a deferred sales load or redemption fee in connection with the redemption of shares of an unrelated open-end investment company, including, without limitation, requiring the shareholder to provide a written representation that neither a deferred sales load nor redemption fee was imposed upon redemption and, in addition, either (a) requiring the shareholder to provide an account activity statement reflecting the redemption that supports the shareholder's representation or (b) reviewing a copy of the current prospectus of the unrelated open-end investment company and determining that such unrelated open-end investment company does not impose a deferred sales load or redemption fee.

6. Applicants propose to impose a contingent deferred sales load on redemptions of shares initially sold without a front-end sales load. The contingent deferred sales load will only be imposed in the event of a redemption transacion occurring within a specified period of time following the share purchase and will be equal to a specified percentage of the lesser of (a) the net asset value of the shares at the time of purchase or (b) the net asset value of the shares at the time of redemption. The proposed holding period will be one year and the proposed contingent deferred sales load will be 1%.

7. Applicants represent that no contingent deferred sales load will be imposed when the investor redeems (a) amounts representing an increase in the value of applicants' shares due to capital appreciation; (b) shares purchased through reinvestment of dividends or capital gains distributions; aor (c) shares held for longer than the holding period. In determining whether a contingent deferred sales load is payable, shares, or amounts representing shares, that are not subject to any contingent deferred sales load will be redeemed first, and other shares or amounts will then be redeemed in the order purchased.

8. Applicants intend to waive all sales loads, including contingent deferred sales loads, in connection with purchases of shares of the Baird Mutual Funds at net asset value by employees and present and former directors of Baird Mutual Funds, employees and directors of the Distributor, employees and directors of the Baird Mutual Funds' investment adviser, and licensed securities representatives of the Distributor. Subject to certain limitations, each Baird Mutual Fund may also issue shares without a sales load, including a contingent deferred sales load, in connection with any merger or consolidation with, or acquisition of the assets of, any investment company.

9. Applicants further intend to waive the contingent deferred sales load on the redemption of shares of the Baird Mutual Funds in the event of:

(a) The death of disability of the shareholder;

(b) A lump sum distribution from a benefit plan qualified under the Employee Retirement Income Security Act of 1974 ("ERISA"); or

(c) Systematic withdrawals from ERISA plans if the shareholder is at least 59½ years old.

Applicants' Condition

If the requested exemptive relief is granted, applicants agree that they will comply with the provisions of proposed Rule 6c–10 under the 1940 Act as currently stated and as it may be adopted and modified in the future.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–2954 Filed 2–6–91; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 17967; 812–7499]

General Cinema Corporation; Notice of Application

January 30, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: General Cinema Corporation.

RELEVANT 1940 ACT SECTIONS: Exemption requested under sections 6(c) and 6(e) from all of the provisions of the 1940 Act, subject to certain exemptions.

SUMMARY OF APPLICATION: Applicant seeks a conditional order exempting it from all of the provisions of the 1940 Act, except sections 9, 36, 37, and, subject to certain exceptions, Sections 17(a), 17(d), 17(e), and 17(f). The requested relief would exempt applicant until September 30, 1991, or until it would no longer be considered an investment company under the 1940 Act, whichever period is shorter.

FILING DATE: The application was filed on March 22, 1990, and an amendment was filed on January 16, 1991.

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 February 26, 1991, 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 5th Street NW., Washington, DC 20549. Applicant, 27 Boylston Street, Chestnut Hill, Massachusetts 02167.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Staff Attorney, at (202) 272–3043, or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant was founded in 1922 as a motion picture exhibition business. It was incorporated in the State of Delaware in 1950 as the successor to a Massachusetts corporation organized in 1937 for the purpose of acquiring additional theatre locations. As of October 31, 1990, approximately 8.2 percent of applicant's assets were devoted to its theatre operations.

2. Since 1968, applicant has expanded its theatre exhibition operations to other consumer-oriented businesses. Currently, applicant's major operating business is specialty retailing, which applicant conducts through its controlling interest in The Neiman Marcus Group, Inc. ("NMG"). Applicant acquired its NMG securities in August 1987 as a result of the reorganization of Carter Hawley Hale Stores, Inc. ("CHH"), in which applicant had maintained an investment since 1984. As of October 31, 1990, NMG's operations accounted for approximately $1.1 billion or 36.2 percent of applicant's assets and approximately $23.6 million or 21.2 percent of applicant's net income.

3. Between 1968 and 1989, applicant engaged in the soft drink bottling business, ultimately operating the nation's largest independent bottling network for Pepsi-Cola and Dr. Pepper. On March 23, 1989, applicant sold its soft drink bottling business to PepsiCo, Inc. for $1.77 billion in cash (the "PepsiCo Sale"). The decision to sell the bottling business was essentially the result of a change in the soft drink bottling industry. The PepsiCo Sale produced after-tax proceeds of $1.2 billion in cash. Applicant invested the majority of the proceeds from the PepsiCo Sale in short-term investments, including obligations of the U.S. Government and its agencies and instrumentalities, repurchase agreements collateralized by such obligations, obligations of foreign and domestic banks, commercial paper, tax-exempt paper, short-term corporate debt, floating rate notes, and auction rate preferred stock. Applicant intends to redeploy these assets in the establishment of one or more new operating businesses.

4. On October 9, 1990, applicant sold $592.5 million worth of its holdings of the outstanding stock of Cadbury Schweppes plc ("Cadbury"), which represented approximately 15 percent of Cadbury's outstanding stock, and invested the proceeds from the sale in short-term investments. Applicant retained approximately 2.0 percent of Cadbury's outstanding stock, which had a market value of approximately $79.9 million as of October 31, 1990.

5. Applicant maintains approximately $3.19 million (less than one percent of its assets) in certain other investments, including interests in three limited partnerships organized by the same general partner (Boston Ventures Limited Partnership) and common stock in an insurance company organized and operated for the purpose of providing insurance coverage to operating businesses such as aplicant (and from which applicant receives a portion of its insurance).

Applicant's Legal Analysis

1. Section 3(a)(3) of the 1940 Act defines the term "investment company" to include any issuer that "is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." As of October 31, 1990, applicant's draft balance sheet, attached as an exhibit to the application,[1] reflects total assets of $3,068,395,000 (which includes assets attributable to NMG's operations). Of this amount, short-term investments account for $1,634,373,000 or 53.3% of applicant's total assets. In addition, the draft financial statements reflect $56,189,000 in equity investments, an additional 1.8% of total assets. Even aside from applicant's holdings of NMG securities, applicant appears to hold investment securities having a value exceeding 40% of its assets. Accordingly, pursuant to section 3(a)(3), applicant could be deemed to be an investment company under the 1940 Act.

2. After the PepsiCo Sale in March 1989, applicant relied on the safe harbor provided by Rule 3a–2 under the 1940 Act. Rule 3a–2 generally provides that, for purposes of section 3(a)(3) of the 1940 Act, an issuer will not be deemed to be engaged in the business of investing, reinvesting, owning, holding, or trading in securities for a period not exceeding one year if the issuer has a bona fide intent to be engaged in a non-investment company business. The maximum one-year period under Rule 3a–2 expired on March 23, 1990, which necessitated the filing of the application. Applicant expects to hold its short-term investments until one or more suitable acquisition or acquisitions have been consumated.

3. Applicant argues that its holdings of NMG securities should not be considered "investment securities" under section 3(a)(3). Applicant owns 16,292,073 shares of Exchangeable Adjustable Voting Common Stock of NMG, which is identical (except as to voting rights) to NMG's common stock, 1,000,000 shares of NMG's 6% Cumulative Exchangeable Convertible Adjustable Voting Preferred Stock, and 533,205 shares of NMG's common stock. (Applicant's NMG Exchangeable Adjustable Voting Common Stock and NMG 6% Cumulative Exchangeable Convertible Adjustable Voting Preferred Stock is hereinafter collectively referred to as "Exchangeable Stock.") Notwithstanding certain limitations on the degree of control that applicant can exercise over NMG, which limitations arise out of a "standstill" agreement between applicant and NMG,[2] applicant

[1] Applicant represents that its application includes financial and statistical data as of the most recent date practicable. With respect to financial information for applicant's fiscal year ended October 31, 1990, the application included a draft annual report to shareholders that included draft financial statements. Applicant subsequently provided to the staff of the Division of Investment Management a final annual report that included final financial statements. The final annual report will be filed with the Commission.

[2] When applicant first acquired the Exchangeable Stock after the restructuring of CHH, it entered into a standstill agreement with NMG governing these securities. Among other things, and in the absence of a tender offer by applicant complying with the terms of the agreement (or acquisition of a significant amount of NMG's common stock by a third party), the agreement: (a) Limits applicant's aggregate voting power in regard to its Exchangeable Stock and restricts applicant's ability to exchange or convert these securities to NMG

Continued

presently: (a) Is the largest single stockholder of NMG, having the right to cast at least 44% of the votes at meetings of NMG's shareholders; (b) is the only holder of preferred stock, entitling it to a class vote (and therefore an absolute veto) respecting proposed amendments to NMG's Restated Certificate of Incorporation; (c) is substantially represented on NMG's board of directors; and (d) provides NMG with virtually all of the services and corporate staff necessary for its operations (including, by way of example, management, legal, accounting, tax, personnel, and real estate services) pursuant to an Intercompnay Services Agreement between the applicant and NMG. In addition, most of NMG's senior executive officers hold identical positions with applicant. Applicant asserts that the foregoing factors demonstrate that NMG is a controlled company of applicant and submits that the NMG securities should not be treated as "investment securities" under section 3(a)(3) of the 1940 Act. Applicant acknowledges, however, that the NMG securities do not constitute securities issued by a majority-owned subsidiary, which would be excluded from the definition of "investment securtiies"under section 3(a)(3).

4. Applicant submits that the relief requested in the application is fully justified and appropriate to resolve any uncertainties respecting the applicability of the 1940 Act to the applicant's present situation. In addition, applicant believes that the issuance of an order under section 6(c) would be in the public interest and consistent with the protection of investors and the purposes of the 1940 Act. Applicant acknowledges that, pursuant to section 6(e), the provisions of the 1940 Act imposed on it in any relief would apply to applicant and to other persons in their transactions and relations with applicant as if it were a registered investment company.

5. Applicant submits that if the requested relief were denied, applicant would be forced to invest a substantial amount of its short-term assets in U.S. Government securities (so that it could meet the 40% test set forth in section 3(a)(3)) or to comply with the provisions of the 1940 Act. The first alternative would require applicant to forego the more attractive yields currently on the majority of its short-term holdings. And, as described thoroughly in the application, the second alternative would result in expensive and burdensome regulation and require changes in applicant's business that would not necessarily benefit shareholders.

6. In determining whether to grant exemptive relief beyond the one-year period prescribed by Rule 3a–2, the Commission has considered the following three factors: (a) Whether the failure of applicant to become primarily engaged in a non-investment business or excepted business or to liquidate within one year was due to factors beyond its control; (b) whether applicant's officers and employees during that period tried, in good faith, to invest applicant's assets in a non-investment business or excepted business or to cause the liquidation of applicant; and (c) whether applicant invested in securities solely to preserve the value of its assets. Applicant meets each of these criteria and thus believes that it is entitled to receive the relief requested by the application.

7. Following the PepsiCo Sale, applicant formed a Mergers and Acquisition Group to accomplish its objective of investing its substantial short-term holdings in one or more new businesses. The Mergers and Acquisition Group—which consists of the four members of the Office of the Chairman, two executive officers, and three other persons—has devoted substantial amounts of time, energy, and resources toward the identification and evaluation of potential acquisition candidates.

8. Applicant's experience in its acquisition efforts demonstrates that its inability to effect an acquisition to date is attributable to factors beyond its control. In the first instance, applicant's acquisition prospects are dependent upon the availability of suitable acquisition candidates in the marketplace. Second, assuming suitable acquisitions are available, applicant's ability to consummate a proposed transaction generally depends on the level of competition and the highest price offered for a particular acquisition.[3]

9. In contrast to the activities of applicant's Mergers and Acquisition Group, the management of applicant's short-term investments are handled by three individuals in applicant's Treasury Department, who are responsible for establishing the policy and guidelines governing applicant's short-term holdings. On a monthly basis, the four members of the Office of the Chairman receive a report summarizing the status of applicant's short-term investments. Because applicant intends to use its short-term holdings (the majority of which represent the proceeds from the PepsiCo Sale) toward the acquisition of one or more new businesses, these holdings have been invested with a view to preserving applicant's short-term assets and not for speculative purposes. The majority of applicant's short-term investments are rated in the top three highest rating categories and none is rated below investment grade.

Applicant's Conditions

Applicant agrees that any relief granted on the application will be subject to the following conditions:

1. Applicant will not purchase or otherwise acquire any additional securities other than securities that are rated investment grade or higher by a nationally recognized statistical rating organization or, if unrated, deemed to be of comparable quality under guidelines approved by applicant's board of directors, except that: Applicant (a) may, without limitation, make additional investments in NMG; and (b) may make equity investments in issuers that are not investment companies, as defined in section 3(a) of the 1940 Act (unless such issuer is covered by a specific exclusion from the definition of investment company under section 3(c) other than section 3(c)(1)), in the following circumstances: (i) In connection with the consideration of the possible acquisition of an operating business as evidenced by a resolution approved by applicant's board of directors and (ii) in connection with the acquisition of majority-owned subsidiaries.

2. Applicant will continue to allocate and utilize its accumulated cash and short-term securities for the bona fide purposes of funding cash requirements for its existing businesses and/or acquiring one or more new businesses. Applicant will not invest or trade in securities for short-term speculative purposes.

3. Applicant will comply with sections 9, 17(a), 17(d), 17(e), 17(f), 36, and 37 of the 1940 Act and the rules and regulations thereunder as if it were a registered investment company under the 1940 Act, provided, however, that: (a) For purposes of sections 17(a), 17(d), and 17(e), the definition of an affiliated person shall not include any employee who is not also an executive officer or

common stock until January 31, 1993; (b) requires a majority of NMG's directors to be independent of applicant until January 31, 1993; (c) requires applicant to vote its Exchangeable Stock in accordance with the recommendations of NMG's board of directors until January 31, 1991.

[3] The staff of the Division of Investment Management notes that, as reported in The Wall Street Journal on January 25, 1991 at page A3, applicant has agreed to acquire Harcourt Brace Jovanovich Inc. for approximately $1.4 billion.

director of General Cinema or NMG, any co-partner of an executive officer or director of General Cinema or NMG, provided such executive officer or director owns less than 5% of the partnership, or any co-partner of General Cinema arising from its investment in the limited partnerships described in the application; (b) the provisions of sections 17(a) and 17(d) [4] shall not apply to (i) applicant's employee benefit plans as described in its most recent proxy statement dated January 30, 1990 (and substantially similar plans, including amendments to existing plans, as described in future proxy statements); (ii) transactions between applicant and NMG; (iii) transactions with an affiliated persons (by reason of ownership of securities in such person) which are effected by applicant (or NMG) for the purpose of acquiring such person; (iv) transactions arising in the ordinary course of business of applicant or NMG which are on terms and under circumstances that are substantially the same or at least as favorable to applicant or NMG as those prevailing at the time for comparable transactions with or involving persons who are not affiliated persons of applicant or NMG withing the meaning of section (2)(a)(3) of the 1940 Act, provided that, with the exception of the procurement of insurance from Liberty Mutual Insurance Company as described in the application, the transaction does not involve more than $100,000 on an annual basis and, for such transactions involving more than $100,000 on an annual basis, the transaction is approved by a required majority (as defined in section 57(o) of the 1940 Act) of the directors of applicant or NMG in accordance with section 57(f) of the 1940 Act; and (v) any transaction by an affiliated person (other than by reason of section 2(a)(3)(C) of the 1940 Act) of a director, executive officer, or member of an advisory board of applicant or NMG, or by an affiliated person (other than by reason of section 2(a)(3)(C) of the 1940 Act) of any persons controlled by or under common control with applicant or NMG, that is approved by a required majority (as defined in section 57(o) of the 1940 Act) of the directors of applicant or NMG in accordance with section 57(f) of the 1940 Act; (c) the provisions of section 17(e)(1) shall not apply to the occasional receipt of travel, entertainment, holiday gifts, and the like from third parties pursuant to established policies of applicant or NMG; and (d) the provisions of section 17(f) shall not apply to applicant's holdings of NMG and Cadbury securities and its investments in the limited partnerships, insurance company, and theatres described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-2955 Filed 2-6-91; 8:45 am]

BILLING CODE 8010-01-M

[4] In determining the applicability of sections 17(a) and 17(d) and for purposes of determining a "required majority" under section 57(o) of the 1940 Act as provided in subsections (d) and (e) below, the provisions of section 57(m) of the 1940 Act shall apply.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2475]

Alabama (With Contiguous Counties in Tennessee, Mississippi, and Georgia); Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on January 4, 1991, I find that the Counties of Colbert, Cullman, Franklin, Jackson, Lauderdale, Lawrence, Madison, Marion, Morgan, and Winston in the State of Alabama constitute a disaster area as a result of damages caused by severe storms and flooding beginning on December 21, 1990. Applications for loans for physical damage may be filed until the close of business on March 4, 1991, and for loans for economic injury until the close of business on October 4, 1991, at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, Georgia 30308, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Blount, De Kalb, Fayette, Marshall, and Walker in the State of Alabama; Hardin, Lawrence and Wayne Counties in the State of Tennessee; Itawamba and Tishomingo Counties in the State of Mississippi; and Dade County in the State of Georgia may be filed until the specified date at the above location.

Any counties contiguous to the above-named primary counties and not listed herein are covered in a separate declaration for the same occurrence.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 247506 and for economic injury the numbers are 722300 for the State of Alabama; 722400 for the State of Tennessee; 722000 for the State of Mississippi; and 722500 for the State of Georgia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 9, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91-2937 Filed 2-6-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Area #7234]

Arkansas; Declaration of Disaster Loan Area

Jackson County and the contiguous counties of Craighead, Cross, Indpendence, Lawrence, Poinsett, White, and Woodruff in the State of Arkansas constitute an Economic Injury Disaster Loan Area due to the destruction of the Highway 18 bridge over the Cache River near Grubbs which was destroyed by fire in July 1990, rebuilt by October 1990 and was washed out by floods in the latter part of December 1990. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on October 24, 1991, at the address listed below: Disaster Area 3 Office, Small Business Administration, 4400 Amon Carter Blvd., suite 102, Ft. Worth, TX 76155, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperative is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: January 24, 1991.

June M. Nichols,

Acting Administrator.

[FR Doc. 91–2939 Filed 2–6–01; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2477]

Indiana; With Contiguous Counties in Ohio, Kentucky, Illinois & Michigan; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on January 5, 1991, and amendments thereto on January 5, 7, and 10, I find that the Counties of Adams, Allen, Bartholomew, Blackford, Brown, Carroll, Clark, Clinton, Dearborn, Decatur, DeKalb, Delaware, Elkart, Fayette, Franklin, Fulton, Gibson, Grant, Greene, Hamilton, Henry, Howard, Huntington, Jay, Johnson, Knox, Kosciusko, Madison, Marion, Marshall, Miami, Monroe, Montgomery, Morgan, Newton, Noble, Owen, Parke, Pike, Porter, Posey, Pulaski, Rush, Shelby, St. Joseph, Sullivan, Tippecanoe, Tipton, Vanderburgh, Vermillion, and Vigo in the State of Indiana constitute a disaster area as a result of damages caused by severe storms and flooding beginning on December 28, 1990. Applications for loans for physical damage may be filed until the close of business on March 7, 1991, and for loans for economic injury until the close of business on October 7, 1991 at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, Georgia 30308, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Benton, Cass, Clay, Daviess, Dubois, Fountain, Hendricks, Jackson, Jasper, Jennings, Lagrange, Lake, LaPorte, Lawrence, Martin, Ohio, Putnam, Randolph, Ripley, Scott, Union, Wabash, Warren, Warrick, Washington, Wayne, Wells, White, and Whitley in the State of Indiana; Butler, Darke, Defiance, Hamilton, Mercer, Paulding, Van Wert, and Williams Counties in the State of Ohio; Boone, Henderson, Jefferson, Oldham, Trimble, and Union Counties in the State of Kentucky; Clark, Crawford, Edgar, Gallatin, Iroquois, Kankakee, Lawrence, Vermilion, Wabash, and White in the State of Illinois; and Berrien, Cass, and St. Joseph Counties in the State of Michigan may be filed until the specified date at the above location.

Any counties contiguous to the above-named counties and not listed herein are covered in a separate declaration for the same occurrence.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 247706 and for economic injury the numbers are 722900 for the State of Indiana; 723000 for the State of Ohio; 722800 for the State of Kentucky; 723100 for the State of Michigan; and 723200 for the State of Illinois.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 15, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91–2940 Filed 2–6–91; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2474]

Mississippi; With Contiguous Counties in Louisiana & Alabama; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on January 3, 1991, and an amendment thereto on January 8, I find that the Counties of Carroll, Clay, Humphreys, Leflore, Lowndes, Madison, Monroe, and Warren in the State of Mississippi constitute a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning on December 19, 1990. Applications for loans for physical damage may be filed until the close of business on March 3, 1991, and for loans for economic injury until the close of business on October 3, 1991, at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, Georgia 30308, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Attala, Chickasaw, Claiborne, Grenada, Hinds, Holmes, Issaquena, Leake, Lee, Montgomery, Noxubee, Oktibbeha, Rankin, Scott, Sharkey, Sunflower, Tallahatchie, Washington, Webster, and Yazoo in the State of Mississippi; Madison and Tensas Counties in the State of Louisiana; and Lamar and Pickins Counties in the State of Alabama may be filed until the specified date at the above location.

Any counties contiguous to the above-named primary counties and not listed herein are covered in a separate declaration for the same occurrence.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 247406 and for economic injury the numbers are 722000 for the State of Mississippi, 722100 for the State of Louisiana, and 722200 for the State of Alabama.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 9, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91–2941 Filed 2–6–91; 8:45 am]

BILLING CODE 8025–01–M

[License No. 06/06–0258]

Texas Commerce Investment Co.; License Surrender

Notice is hereby given that Texas Commerce Investment Co., 712 Main Street, Houston, TX 77002 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). Texas Commerce Investment Co. was licensed by the Small Business Administration on June 9, 1982.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on January 25, 1991 and accordingly, all rights,

privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 30, 1991.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 91–2942 Filed 2–6–91; 8:45 am]

BILLING CODE 8025–01–M

California; Region IX Regional Advisory Council Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of San Francisco, will hold a public meeting at 10 a.m. on Thursday, February 28, 1991, at the Oakland Chamber of Commerce, Conference Room, 475 14th Street, Oakland, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Michael R. Howland, District Director, U.S. Small Business Administration, 211 Main Street, 4th Floor, San Francisco, California 94105–1988, telephone (415) 744–6801.

Dated: January 28, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–2943 Filed 2–6–91; 8:45 am]

BILLING CODE 8025–01–M

Texas; Region VI Advisory Council Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Rio Grande Valley, will hold a public meeting at 1 p.m. on Thursday, February 28, 1991, at the Rio Grande Valley Chamber of Commerce, FM 1015 & Expressway 83, Weslaco, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Miguel Cavazos, Jr., District Director, U.S. Small Business Administration, 222 E. Van Buren, Suite 500, Harlingen, Texas 78550, telephone (512) 427–8625.

Dated: January 28, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–2944 Filed 2–6–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Office of the Legal Adviser

[Public Notice 1339]

Claims for Property Located in the Territory of the Former German Democratic Republic

Prior to German unification, the former German Democratic Republic (GDR) published a law providing for the registration of certain claims of individuals and corporations (including claims of non-German nationals) to property expropriated or placed under state administration by the communist government of the GDR. This law, described in Public Notice 1259, 55 FR 37392 (Sept. 11, 1990), remains in effect in the united Federal Republic of Germany (FRG).

Since that time, new German laws have come into effect modifying and expanding upon the initial claims registration law. As revised, the domestic German claims program covers the following three additional categories of property claims with the filing deadlines noted below:

1. Claims of persons who were persecuted in the period from January 30, 1933, through May 8, 1945, for racial, political, religious, or ideological reasons, and who lost property in the territory of the former GDR as a result of forced sales or expropriations. The deadline for filing claims falling within this category is March 31, 1991.

2. Claims for assets which were seized in connection with criminal proceedings not in conformity with the principle of a state based on the rule of law, provided that the claimant has applied under governing German law for review of the criminal verdict or other prosecution measures. The deadline for filing claims falling within this category is March 31, 1991.

3. Claims for residential properties which were transferred to state ownership by expropriation, relinquishment of ownership, donation, or renunciation of inheritance, on the basis of rents that did not cover costs and consequent over-indebtedness. The deadline for filing claims falling within this category was October 13, 1991.

Additionally, it is our understanding that any property claims filed with the GDR before July 15, 1990, must be resubmitted.

The deadline for claims filed under the original registration decree for certain claims to property expropriated or placed under state administration after 1949 by the communist government of the GDR remains October 13, 1990. Potential claimants should understand, however, that failure to file a claim by the relevant deadline does not automatically terminate all potential rights under the German claims program. Although certain rights may be waived if a claimant does not file before the relevant deadline, late declarations of claims will be considered. A claimant who files after the relevant deadline is still eligible for financial compensation. Moreover, so long as the administrative agency responsible for disposing of expropriated property has not sold the property in question or entered into other long-term legal obligations, a claimant who files after the relevant deadline may still seek restitution of the property. Within these limits, the German government has not yet established a final filing deadline for its claims program.

The U.S. Government continues to pursue a lump-sum settlement with the FRG of claims adjudicated by the Foreign Claims Settlement Commission in its GDR program. Since such a settlement may not preclude persons with such claims from having the option of recovering under the domestic German claims program, all individuals with property claims may wish to consider filing under the domestic German claims program.

Anyone who wishes to receive more information, including information on how and where to file a claim, should contact the Embassy of the Federal Republic of Germany in Washington, DC, or regional German consulates. The German Embassy in Washington may be reached at 4645 Reservoir Road NW., Washington, DC 20007 (tel: 202–298–4000). In addition, persons may obtain further information from the Foreign Claims Settlement Commission, Washington, DC 20579, Attn: David Bradley, Chief Counsel (tel: 202–653–5883), or the Assistant Legal Adviser for International Claims and Investment Disputes, 2100 K Street NW., Washington, DC 20037–7180 (tel: 202–632–5040).

Dated: January 30, 1991.

Ronald J. Bettauer,

Assistant Legal Adviser for International Claims and Investment Disputes.

[FR Doc. 91–2917 Filed 2–6–91; 8:45 am]

BILLING CODE 4710–08–M

[Public Notice 1338]

Oceans and International Environmental and Scientific Affairs Advisory Committee; Partially Closed Meeting

The Antarctic Section of the Oceans and International Environmental and Scientific Affairs Advisory Committee will meet at 2 pm, February 28, 1991, in room 1406, Department of State, 22nd and C Streets, NW., Washington DC.

At this meeting, officers responsible for Antarctic affairs in the Department of State will report on the Eleventh Antarctic Treaty Special Consultative Meeting in Vina del Mar, Chile and preparations for the follow-on to that meeting, which is scheduled to take place in April. The Section will also discuss issues related to the Preparatory Meeting for the Sixteenth Antarctic Treaty Consultative Meeting, which will be held in Bonn, also in April. Department officials will be prepared to discuss other key issues and problems involving the Antarctic in the context of current domestic and international developments. This session will be open to the public. The public will be admitted to the session to the limits of seating capacity and will be given the opportunity to participate in discussion according to the instructions of the Chairman. As access to the Department of State is controlled, persons wishing to attend the meeting should enter the Department through the Diplomatic ("C" Street) Entrance. Department officials will be at the Diplomatic Entrance to escort attendees.

The Antarctic Section of the Oceans and International Environmental and Scientific Affairs Advisory Committee will also meet on March 1, in room 1406, Department of State, 22nd and C Streets, NW. The purpose of these discussions will be to elicit views concerning the further development of United States policy regarding current Antarctic issues, and will concentrate on the results of the Eleventh Antarctic Treaty Special Consultative Meeting in Vina del Mar, Chile and preparations for the follow-on to that meeting, which is scheduled to take place in Madrid, April 22–30, 1991. The Section will cover the development of U.S. policy regarding the Preparatory Meeting for the Sixteenth Antarctic Treaty Consultative Meeting, which will be held in Bonn, April 15–19, 1991. The meeting will include classified briefings and examination and discussion of classified documents pursuant to Executive Order 12356. The disclosure of classified material and revelation of considerations which go into policy development would substantially undermine and frustrate the U.S. position in future meetings and negotiations. Therefore, the meeting will not be open to the public, pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c) (1) and 5 U.S.C. 552b (c)(9)(B).

Requests for further information on the meetings should be directed to R. Tucker Scully of OES/OA, Room 5801, Department of State. He may be reached by telephone on (202) 647–3262.

Dated: January 28, 1991.

Curtis Bohlen,

Chairman.

[FR Doc. 91–2918 Filed 2–6–91; 8:45 am]

BILLING CODE 4710–09–M

Office of Inter-American Affairs

[Public Notice 1335]

Delegation of Authority No. 187; Foreign Asistance Act of 1961 and Certain Related Acts

By virtue of the authority vested in me by Delegation of Authority No. 145–5 of January 22, 1988, 53 FR 5072, pursuant to Executive order 12163 of September 29, 1979, 44 FR 56673, as amended, and the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2151 et. seq., I hereby delegate to the Assistant Administrator for Latin America and the Caribbean of the Agency of International Development functions conferred on the President by section 534(b)(3)(D) of the Act.

Dated: January 28, 1991.

Bernard Aronson,

Assistant Secretary for Inter-American Affairs.

[FR Doc. 91–2865 Filed 2–6–91; 8:45 am]

BILLING CODE 4710–29–M

Office of Diplomatic Security

[Public Notice 1337]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511.

SUMMARY: The Arms Export Control Act (22 CFR part 2778) authorizes control of the export and import of defense articles and defense services. The information collection requirements listed are associated with the registration, reporting, and issuance of licenses for the export and import of items on the United States Munitions List. The following summarizes the information collection proposals submitted to OMB:

1. Type of request—Reinstatement.

Originating office—Bureau of Politico-Military Affairs.

Title of information collection—Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data.

Frequency—Triennially.

Form Number—DSP–5.

Respondents—Applicants for Export Licenses of Defense Articles and Related Technical Data.

Estimated number of respondents—4,500.

Average number of responses per respondent—12.34.

Average hours per response—½ hour.

Total estimated burden hours—27,765.

2. Type of request—Reinstatement.

Originating office—Bureau of Politico-Military Affairs.

Title of information collection—Application for Registration.

Frequenty—Triennially.

Form Number—DSP–9.

Respondents—Manufacturers and Exporters of Defense Articles and Services.

Estimated number of respondents—3,000.

Average hours per response—1 hour.

Total estimated burden hours—3,000.

3. Type of request—Reinstatement.

Originating office—Bureau of Politico-Military Affairs.

Title of information collection—Application/License for Temporary Import of Unclassified Defense Articles.

Frequency—Triennially.

Form Number.—DSP–61.

Respondents—Importers of Unclassified Defense Articles.

Estimated number of respondents—4,500.

Average number of responses per respondent—2.09.

Average hours per response—½ hour.

Total estimated burden hours—4,702.

4. Type of request—Reinstatement.

Originating office—Bureau of Politico-Military Affairs.

Title of information collection—Application/License for Temporary Export of Unclassified Defense Articles.

Frequency—Triennially.

Form Number—DSP–73.

Respondents—Exporters of Unclassified Defense Articles.

Estimated number of respondents—4,500.

Average number of responses per respondent—1.47.

Average hours per response—½ hour.
Total estimated burden hours—3,307.
5. Type of request—Reinstatement.
Originating office—Bureau of Politico-Military Affairs.
Title of information collection—Non-Transfer and Use Certificate.
Frequency—Triennially.
Form No.—DSP–83.
Respondents—Exporters of Munitions List Defense Articles.
Estimated number of respondents—4,500.
Average number of responses per respondent—6.67.
Average hours per response—½ hour.
Total estimated burden hours—15,007.
6. Type of request—Reinstatement.
Originating office—Bureau of Politico-Military Affairs.
Title of information collection—Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Related Classified Technical Data.
Frequency—Triennially.
Form No.—DSP–85.
Respondents—Exporters/Importers of Items on the U.S. Munitions List.
Estimated number of respondents—4,500.
Average number of responses per respondent—.026.
Average hours per response—½ hour.
Total estimated burden hours—585.
7. Type of request—Reinstatement.
Originating office—Bureau of Politico-Military Affairs.
Title of information collection—Authority to Export Defense articles and Defense Services Sold Under the Foreign Military Sales Program.
Frequency—Triennially.
Form No.—DSP–94.
Respondents—Exporters of Defense Articles Under the Foreign Military Sales Program.
Estimated number of respondents—250.
Average number of responses per respondent—20.
Average hours per response—8 minutes.
Total estimated burden hours—2,500.
8. Type of request—Reinstatement.
Originating office—Bureau of Politico-Military Affairs.
Title of information collection—Political Contributions and Fees or Commissions in Connection With the Sale of Defense Articles or Services.
Frequency—On occasion.
Respondents—Exporters of Defense Articles or Services.
Estimated number of respondents—3,000.
Average number of responses per respondent—.04.
Average hours per response—8 hours.
Total estimated burden hours—952.
Section 3504(h) of Public Law 96–511 was addressed in the regulation published in the **Federal Register** (49 CFR 49671).

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647–3538. Comments and questions should be directed to (OMB) Marshall Mills (202) 395–7340.

Dated: January 29, 1991.

Sheldon J. Krys,

Assistant Secretary for Diplomatic Security.

[FR Doc. 91–2864 Filed 2–6–91; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

UMTA Section 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1990, Public Law 101–164, signed into law by President George Bush on November 21, 1989, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** every 30 days of grants obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Janet Lynn Sahaj, Chief, Resource Management Division, Office of Capital and Formula Assistance, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street SW., room 9301, Washington, DC 20590, (202) 366–2053.

SUPPLEMENTARY INFORMATION: The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

SECTION 3 GRANTS

Transit property	Grant number	Grant amount	Obligation date
City of Key West, Key West, FL	FL–03–0103–00	$600,000	01/07/91
Commuter Rail Division of the Regional Transportation Authority, Chicago, IL–Northwestern IN	IL–03–0133–02	4,665,000	09/28/90
Commuter Rail Division of the Regional Transportation Authority, Chicago, IL–Northwestern IN	IL–03–0149–00	11,508,000	09/28/90
Chicago Transit Authority, Chicago, IL–Northwestern IN	IL–03–0154–00	30,699,975	09/28/90
Northern Indiana Commuter Transportation District, Chicago, IL–Northwestern IN	IN–03–0062–00	199,998	12/31/90

SECTION 9 GRANTS

Transit property	Grant number	Grant amount	Obligation date
City of Montgomery, Montgomery, AL	AL–90–X054–00	1,162,423	12/28/90
City of Tucson, Tucson, AZ	AZ–90–X026–00	4,217,719	12/31/90
City of Simi Valley, Simi Valley, CA	CA–90–X411–00	609,250	

SECTION 9 GRANTS—Continued

Transit property	Grant number	Grant amount	Obligation date
City of Montebello, Los Angeles–Long Beach, CA	CA–90–X414–00	4,700,000	12/31/90
City of Napa, Napa, CA	CA–90–X419–00	669,550	12/31/90
City of Commerce, Los Angeles—Long Beach, CA	CA–90–X432–00	78,800	12/31/90
City of Colorado Springs, Colorado Springs, CO	CO–90–X056–00	296,800	12/31/90
City of Pueblo, Pueblo, CO	CO–90–X057–00	1,263,185	12/31/90
Middletown Transit District, Danbury, CT–N.Y	CT–90–X160–01	176,614	12/31/90
Greater Waterbury Transit District, Waterbury, CT	CT–90–X166–01	47,000	12/31/90
Greater Hartford Transit District, Hartford, CT	CT–90–X169–00	1,520,000	12/31/90
Housatonic Area Regional Transit District, Danbury, CT–N.Y	CT–90–X175–01	104,000	12/31/90
City of Stamford Commission on Aging, Stamford, CT	CT–90–X179–00	200,980	12/31/90
Norwalk Transit District, Norwalk, CT	CT–90–X180–00	239,987	12/31/90
Delaware Transportation Authority, Delaware	DE–90–X010–00	1,950,000	12/28/90
Hillsborough Area Regional Transit Authority, Tampa, FL	FL–90–X141–01	796,540	12/28/90
Orange-Seminole-Osceola Transportation Authority, Orlando, FL	FL–90–X156–00	1,740,981	12/28/90
Broward County Board of Commissioners, Fort Lauderdale–Hollywood, FL	FL–90–X159–00	7,131,520	12/28/90
Metropolitan Dade Transit Agency, Miami, FL	FL–90–X160–00	14,832,737	12/31/90
East Volusia County—East Volusia Transp. Authority, Daytona Beach, FL	FL–90–X161–00	1,034,025	12/28/90
City of Tallahassee—Tallahassee Transit Authority, Tallahassee, FL	FL–90–X162–00	844,180	12/28/90
City of Gainesville, Gainesville, FL	FL–90–X163–00	828,000	12/28/90
Jacksonville Transportation Authority, Jacksonville, FL	FL–90–X164–00	3,925,391	12/28/90
Hillsborough Area Regional Transit Authority, Tampa, FL	FL–90–X165–00	1,919,226	12/28/90
Consolidated Government of Columbus, Columbus, GA.–AL	GA–90–X050–01	115,104	12/28/90
City of Augusta, August, GA.–S.C	GA–90–X056–01	192,553	12/28/90
Metropolitan Atlanta Rapid Transit Authority, Atlanta, GA	GA–90–X059–00	19,268,000	12/28/90
Atlanta Regional Commission, Atlanta, GA	GA–90–X060–00	100,000	12/28/90
Keyline Bus System, Dubuque, IA.–IL	IA–90–X112–02	400,000	12/31/90
Sioux City Transit System, Sioux City, IA–NE–S.D	IA–90–X117–00	450,681	12/31/90
City of Coralville, Iowa City, IA	IA–90–X118–00	51,191	12/31/90
University of Iowa/Cambus, Iowa City, IA	IA–90–X119–00	94,860	12/31/90
Iowa City Transit, Iowa City, IA	IA–90–X120–00	202,401	12/31/90
Des Moines Metropolitan Transit Authority, Des Moines, IA	IA–90–X121–00	1,423,286	12/31/90
Cedar Rapids Transit Department, Cedar Rapids, IA	IA–90–X122–00	754,812	12/31/90
City of Pocatello, Pocatello, ID	ID–90–X020–00	315,959	12/31/90
City of Decatur, Decatur, IL	IL–90–X165–00	701,028	12/31/90
Champaign-Urbana Mass Transit District, Champaign-Urbana, IL	IL–90–X167–00	868,800	12/31/90
City of East Dubuque, Dubuque, IA–IL	IL–90–X168–00	6,659	12/31/90
Greater Peoria Mass Transit District, Peoria, IL	IL–90–X169–00	601,440	12/31/90
Springfield Mass Transit District, Springfield, IL	IL–90–X170–00	863,100	12/31/90
Bloomington-Normal Public Transit System, Bloomington-Normal, IL	IL–90–X171–00	614,899	12/31/90
Rock Island County Metropolitan Mass Transit District, Davenport-Rock Isl–MO, IA–IL	IL–90–X172–00	336,000	12/31/90
Greater Lafayette Public Transportation Corporation, Lafayette-West Lafayette, IN	IN–90–X144–00	700,022	12/31/90
Indianapolis Public Transportation Corporation, Indianapolis, IN	IN–90–X145–00	5,475,909	12/31/90
Fort Wayne Public Transportation Corp., Fort Wayne, IN	IN–90–X146–00	1,424,062	12/31/90
South Bend Public Transportation Corporation, South Bend, IN–MI	IN–90–X147–00	1,172,924	12/31/90
Johnson County Transit, Kansas City, MO–KS	KS–90–X047–00	391,600	12/31/90
Transit Authority of the Lexington-Fayette Urban County Govt., Lexington-Fayette, KY	KY–90–X050–01	150,000	12/26/90
Transit Authority of River City, Louisville, KY–IN	KY–90–X051–00	4,636,021	12/31/90
Regional Transit Authority, New Orleans, LA	LA–90–X113–00	16,004,958	12/31/90
City of Baton Rouge, Baton Rouge, LA	LA–90–X114–00	3,408,662	12/31/90
Montachusett Regional Transit Authority, Fitchburg-Leominster, MA	MA–90–X113–00	338,807	12/31/90
Cape Ann Transportation Authority, Boston MA	MA–90–X114–00	93,164	12/31/90
Brockton Area Transit Authority, Brockton, MA	MA–90–X115–00	1,204,578	12/31/90
Worcester Regional Transit Authority, Worcester, MA	MA–90–X116–00	2,150,559	12/31/90
Lowell Regional Transit Authority, Lowell, MA–N.H	MA–90–X117–00	1,071,380	12/31/90
Southeastern Regional Transit Authority, New Bedford, MA	MA–90–X118–00	2,028,538	12/31/90
Pioneer Valley Transit Authority, Springfield-Chic-Holy, MA–CT	MA–90–X119–00	3,566,099	12/31/90
Merrimack Valley Regional Transit Authority, Lawrence-Haverhill, MA–N.H	MA–90–X120–00	1,603,346	12/31/90
Mass Transit Administration, Baltimore, MD	MD–90–X044–00	18,086,485	12/31/90
Greater Portland Transit District, Portland, ME	ME–90–X051–00	401,020	12/31/90
Maine Department of Transportation, Maine	ME–90–X052–00	261,485	12/31/90
Ann Arbor Transportation Authority, Ann Arbor, MI	MI–90–X135–00	1,283,167	12/31/90
Jackson Transit System, Jackson, MI	MI–90–X136–00	463,517	12/31/90
Twin Cities Area Transportation Authority, Benton Harbor, MI	MI–90–X137–00	351,987	12/31/90
Grand Rapids Areas Transit Authority, Grand Rapids, MI	MI–90–X138–00	1,722,147	12/31/90
City of Moorhead, Fargo-Moorhead, N.D.–MN	MN–90–X050–00	249,195	12/31/90
Bi-State Development Agency, St. Louis, MO.–Il	MO–90–X073–00	14,927,717	12/31/90
City of Hattiesburg—Planning & Community Development, Hattiesburg, MS	MS–90–X036–00	482,445	12/28/90
City of Durham, Durham, N.C	NC–90–X109–00	9,255,300	12/18/90
City of Greensboro, Greensboro, N.C	NC–90–X111–00	338,894	12/28/90
City of Durham, Durham, N.C	NC–90–X117–00	903,500	12/18/90
City of Asheville, Asheville, N.C	NC–90–X120–00	608,348	12/26/90
City of Raleigh, Raleigh, N.C	NC–90–X121–00	1,000,142	12/26/90
City of Charlotte, Charlotte, N.C	NC–90–X122–00	4,563,011	12/28/90
City of Lincoln, Lincoln, NE	NE–90–X027–00	1,112,693	12/31/90
New Jersey Transit Corporation, New York, N.Y.–Northeastern N.J	NJ–90–X031–00	101,512,562	12/28/90
Regional Transportation Commission of Washoe County, Reno, NV	NV–90–X015–00	1,221,453	12/31/90
City of Albany Parking Authority, Albany-Schenectady-Troy, N.Y	NY–90–X179–00	742,684	12/31/90
Orange County, Newburgh, N.Y	NY–90–X192–00	415,036	12/31/90

SECTION 9 GRANTS—Continued

Transit property	Grant number	Grant amount	Obligation date
Niagara Frontier Transportation Authority, Buffalo, N.Y	NY-90-X193-00	8,392,560	12/31/90
Suffolk Co., New York, N.Y.,-Northeastern N.J	NY-90-X194-00	5,829,331	12/31/90
Nassau County, New York, N.Y.-Northeastern N.J	NY-90-X195-00	4,962,396	12/31/90
City of Long Beach, New York, N.Y.-Northeastern N.J	NY-90-X196-00	342,690	12/31/90
Town of Huntington, New York, N.Y.-Northeastern N.J	NY-90-X197-00	623,138	12/31/90
Greater Glens Falls Transit System, Glen Falls, N.Y	NY-90-X198-00	265,591	12/31/90
Capital District Transportation Authority, Albany-Schenectady-Troy, N.Y	NY-90-X199-00	5,042,460	12/31/90
New York Metropolitan Transportation Authority, New York, N.Y.-Northeastern N.J	NY-90-X200-00	298,329,607	12/31/90
Rochester-Genesee Regional Transportation Authority, Rochester, N.Y	NY-90-X201-00	3,807,184	12/31/90
Utica Transit Authority, Utica-Rome, N.Y	NY-90-X202-00	490,000	12/27/90
Canton Regional Transit Authority, Canton, OH	OH-90-X137-00	100,000	12/31/90
Metro Regional Transit Authority, Akron, OH	OH-90-X138-00	3,608,900	12/31/90
Central Ohio Transit Authority, Columbus, OH	OH-90-X140-00	4,363,157	12/31/90
Miami Valley Regional Transit Authority, Dayton, OH	OH-90-X141-00	7,042,863	12/31/90
Toledo Area Regional Transit Authority, Toledo, OH.-MI	OH-90-X142-00	2,678,000	12/31/90
Portage Area Regional Transportation Authority, Akron, OH	OH-90-X143-00	666,565	12/31/90
Central Ohio Transit Authority, Columbus, OH	OH-90-X144-00	2,020,000	12/31/90
Metropolitan Tulsa Transit Authority, Tulsa, OK	OK-90-X036-00	3,435,443	12/31/90
Lane Transit District, Eugene, OR	OR-90-X036-00	1,370,000	12/31/90
Salem Area Mass Transit District, Salem, OR	OR-90-X037-00	958,401	12/31/90
Erie Metropolitan Transit Authority, Erie, PA	PA-90-X195-01	241,800	12/27/90
Cumberland-Dauphin-Harrisburg Transit Authority, Harrisburg, PA	PA-90-X197-01	1,137,100	12/27/90
Luzerne County Transportation Authority, Scranton-Wilkes Barre, PA	PA-90-X198-00	947,505	12/27/90
County of Lackawanna Transit System, Scranton-Wilkes Barre, PA	PA-90-X199-00	843,079	12/28/90
York County Transportation Authority, York, PA	PA-90-X200-00	152,001	12/31/90
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA.-N.J	PA-90-X201-00	64.527,983	12/28/90
Lehigh and Northampton Transportation Authority, Allentown-Beth-East, PA.-N.J	PA-90-X202-00	240,000	12/31/90
Westmoreland County Transit Authority, Pittsburgh, PA	PA-90-X203-00	231,200	12/28/90
Port Authority of Allegheny County, Pittsburgh, PA	PA-90-X204-00	22,407,431	12/31/90
Beaver County Transit Authority, Pittsburgh, PA	PA-90-X205-00	326,124	12/28/90
Municipality Of Manati, Vega-Baja-Manati, P.R	PR-90-X031-01	476,000	12/28/90
Municipality of Vega Alta, Vega-Baja-Manati, P.R	PR-90-X056-00	266,400	12/28/90
Commonwealth of Puerto Rico, San Juan, P.R	PR-90-X058-00	340,000	12/28/90
Metropolitan Bus Authority, San Juan, P.R	PR-90-X059-00	8,468,026	12/28/90
Rhode Island Department of Transportation, Providence-Pawtucket-Warwick, R.I.-MASS	RI-90-X015-02	8,910,095	12/31/90
City of Rapid City, Rapid City, S.D	SD-90-X017-00	282,150	12/31/90
Memphis Area Transit Authority, Memphis, TN.-AR.-MS	TN-90-X086-00	3,595,220	12/28/90
Chattanooga Area Regional Transportation Authority, Chattanooga, TN.-GA	TN-90-X088-00	1,544,488	12/31/90
Metropolitan Transit Authority, Nashville-Davidson, TN	TN-90-X089-00	3,700,000	12/31/90
City of Knoxville—Knoxville Transportation Authority, Knoxville, TN	TN-90-X090-00	1,366,034	12/28/90
Corpus Christi Regional Transit Authority, Corpus Christi, TX	TX-90-X200-00	2,008,000	12/31/90
City of Plano Dallas-Ft. Worth, TX	TX-90-X201-00	11,000	12/31/90
Metropolitan Transit Authority of Harris County Houston, TX	TX-90-X202-00	20,430,000	12/31/90
City of Wichita Falls, Wichita Falls, TX	TX-90-X203-00	923,808	12/31/90
City of Brownsville, Brownsville, TX	TX-90-X204-00	2,137,400	12/31/90
Lower Rio Grande Development Council, McAllen-Pharr-Edinburg, TX	TX-90-X205-00	195,000	12/31/90
Peninsula Transportation District Commission, Newport News-Hampton, VA	VA-90-X075-01	1,949,191	12/26/90
Tidewater Transportation District Commission, Norfolk-Portsmouth, VA	VA-90-X082-00	3,289,615	12/26/90
Chittenden County Transportation Authority, Burlington, VT	VT-90-X011-00	425,378	12/31/90
Kitsap Transit, Bremerton, WA	WA-90-X110-00	1,011,373	12/31/90
Snohomish County Transportation Authority, Seattle-Everett, WA	WA-90-X111-00	156,000	12/31/90
Washington, State Dept. of Transportation Marine Division, Washington	WA-90-X112-00	1,164,000	12/31/90
City of Lacrosse Planning Department (LAPC) La Crosse, WI.-MN	WI-90-X124-00	919,254	12/31/90
City of Weirton, West Virginia	WV-90-X041-00	161,816	12/31/90

Issued on February 1, 1991.

Brian W. Clymer,

Administrator.

[FR Doc. 91-2929 Filed 2-6-91; 8:45 am]

BILLING CODE 4910-57-M

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Harry S. Truman Scholarship Nomination Forms

AGENCY: Harry S. Truman Scholarship Foundation; information collection under OMB Review.

ACTION: Notice.

SUMMARY: The Harry S. Truman Scholarship Foundations has submitted to OMB for approval the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Nomination Forms for Scholarship Program; OMB Control No. 3200-0004.

Type of request: Reinstatement.

Average Burden Hours/Minute: 10 hours.

Frequency of Response: One response per respondent.

Number of Respondents: 1,100.

Annual Burden Hours: 11,000.

Annual Responses: 1,100.

Needs and Uses: The Foundation's nomination forms are used by appointed Truman Scholarship Faculty Representatives on participating college/university campuses to advance the nominations of up to 3 candidates per year for the Truman Scholarship.

Affected Public: Individuals seeking nomination for the Harry S. Truman Scholarship.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Written comments and recommendations on the proposed information collection should be sent to Louis H. Blair, Executive Secretary, 712

Jackson Place, NW., Washington, DC 20006.

Harry S. Truman Scholarship Foundation Clearance Officer: Louis H. Blair, Executive Secretary.

Dated: January 31, 1991.

Louis H. Blair,

Executive Secretary.

[FR Doc. 91-2919 Filed 2-6-91; 8:45 am]

BILLING CODE 6820-AD-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Dated: February 1, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Office of Thrift Supervision

OMB Number: 1550-0030.
Form Number: 1344.
Type of Review: Extension.
Title: Subordinated Debt Application.
Description: The information provided by OTS Form 1344 is evaluated by the OTS to determine whether the issuance and sale of subordinated debt securities complies with applicable state and Federal laws, OTS regulation and policy, and will not have an adverse effect on the risk exposure of the Savings Associations Insurance Fund (SAIF).
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 20.
Estimated Burden Hours Per Response: 60 hours.
Frequency of Response: Submitted each time applicant applies to issue subordinated debt securities.
Estimated Total Reporting Burden: 1,200 hours.

OMB Number: 1550-0016.
Form Number: 710.
Type of Review: Extension.
Title: Merger Application.
Description: Information on OTS Form 710 is evaluated by the OTS to determine whether the proposed transaction complies with applicable state and Federal laws, OTS regulations and policy, and will not have an adverse effect on the risk exposure of the Savings Associations Insurance Fund (SAIF).
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 43.
Estimated Burden Hours Per Response: 36 hours.
Frequency of Response: When application is filed.
Estimated Total Reporting Burden: 1,548 hours.
Clearance Officer: John Turner, (202) 906-6840, Office of Thrift Supervision, 1700 G Street, NW., 3rd Floor, Washington, DC 20552.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-2867 Filed 2-6-91; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: February 1, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0174.
Form Number: None.
Type of Review: Extension.
Title: Electronic Entry Filing.
Description: This rule will permit qualified brokers, importers and service bureaus to file electronically through Automated Broker Interface (ABI) immediate delivery/entry and entry summary data.
Estimated Number of Respondents: 1,200.
Estimated Burden Hours Per Response/Recordkeeping: 4 hours, 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 7,500 hours.
Clearance Officer: Ralph Meyer, (202) 343-0044, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-2868 Filed 2-6-91; 8:45 am]

BILLING CODE 4820-02-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 31, 1991.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0034.
Form Number: 942, 942PR.
Type of Review: Revision.
Title: Employer's Quarterly Tax Return for Household Employees; Planilla Para la Declaracion Trimestral Del Patrono de Empleados Domesticos.
Description: Form 942 is used by household employers to report social security tax on their household employees. Household employers can also use Form 942 to report income tax withheld. Form 942-PR is for household employers in Puerto Rico.
Respondents: Individuals or households.
Estimated Number of Respondents: 414,437.
Estimated Burden Hours Per Response/Recordkeeping: Recordkeeping, 20 minutes; Learning about the law or the form, 20 minutes; Preparing the form, 31 minutes; Copying, assembling, and sending the form to IRS, 20 minutes.
Frequency of Response: Quarterly.

Estimated Total Recordkeeping/ Reporting Burden: 2,361,569 hours.

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–2869 Filed 2–6–91; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

February 1, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0295.

Form Number: Form 5064 and Notice 210.

Type of Review: Extension.

Title: Media Label (Form 5064); Preparation Instructions for Media Label (Notice 210).

Description: 26 U.S.C. 6041 and 6042 require that all persons engaged in a trade or business and making payments of taxable income must file reports of this income with IRS. Payers wishing to file these returns on magnetic media must complete Form 5064 to label their media with pertinent information essential to the processing of their data. Notice 210 provides instructions to the filers for filling out the label.

Respondents: State or local governments, farms, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.

Estimated Number of Respondents: 30,000.

Estimated Burden Hours Per Response: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 5,106 hours.

OMB Number: 1545–0939.

Form Number: 8404.

Type of Review: Extension.

Title: Computation of Interest Charge on DISC-Related Deferred Tax Liability.

Description: Shareholders of Interest Charge Domestic International Sales Corporations (IC–DISCs) use Form 8404 to figure and report an interest charge on their DISC related deferred tax liability. The interest charge is required by Internal Revenue Code section 995(f). IRS uses Form 8404 to determine whether the shareholders has correctly figured and paid the interest charge on a timely basis.

Respondents: Individuals or households, businesses or other for-profit.

Estimated Number of Respondents: 2,000.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping—4 hours, 4 minutes

Learning about the law or the form—2 hours, 23 minutes

Preparing, and sending the form to IRS—2 hours, 34 minutes

Frequency of Response: Annually.

Estimated Total Recordkeeping/ Reporting Burden: 18,020 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91–2959 Filed 2–6–91; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 26
Thursday, February 7, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, February 12, 1991, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b).
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, February 14, 1991, 10:00 a.m.

PALCE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Correction and Approval of Minutes
Draft Advisory Opinion 1990–29–Timothy W. Jenkins on behalf of Joseph E. Seagram & Sons, Inc.
Administrative Matters.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone (202) 376–3155.

Hilda Arnold,

Administrative Assistant, Officer of the Secretariat.

[FR Doc. 91–3098 Filed 2–5–91; 2:34 pm]

BILLING CODE 6715–01–M

Corrections

Federal Register
Vol. 56, No. 26
Thursday, February 7, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Short-Supply Determination: Certain Continuous Cast Steel Slabs

Correction

In notice document 91-1312 beginning on page 1981, in the issue of Friday, January 18, 1991, make the following correction:

On page 1982, in the second column, in the eighth line from the bottom, "and 36,000", should read "and 36,300".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

RIN 1094-AA37

Special Rules Applicable to Surface Coal Mining Hearings and Appeals

Correction

In rule document 91-1336 beginning on page 2139 in the issue of Tuesday, January 22, 1991, make the following corrections:

1. On page 2140, in the first column, in the first paragraph, in the ninth line from bottom of the paragraph, "52 FR 29528" should read "52 FR 39528".

2. On the same page, in the same column, in the last complete paragraph, in the fourth line "request" should read, "requests".

3. On the same page, in the second column, in the last paragraph, in the sixth line, "1264", should read "30 U.S.C. 1264(a)".

§ 4.1109 [Corrected]

4. On page 2142, in the third column, in § 4.1109(a), in the first line, "part" should read "party. In the same paragraph in the ninth line"of" should read "at". In the same paragraph in the last line, "filed" should read "field".

5. On page 2143, in the second column, in the table of contents, in the third line "Burden" should read "Burdens".

§ 4.1360 [Corrected]

6. On the same page in the same column, in § 4.1360(a), in the sixth line, "or" should read "on". In the same column, in § 4.1360(b), in the third line "right" should read "rights".

§ 4.1363 [Corrected]

7. On the same page in the third column, § 4.1363(e), in the fourth line, "was" should read "as".

§ § 4.1370-4.1379 [Corrected]

8. On page 2145, in the first column," § § 4.1370-4.1739 [Amended]" should read "§ § 4.1370-4.1379 [Removed]".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S-207]

RIN 1218-AA57

Safety Standards for Stairways and Ladders Used in the Construction Industry

Correction

In the issue of January 23, 1991, on page 2585, in the correction of FR Doc. 90-26520, a portion of the text that appeared is inaccurate and is corrected as follows:

§1926.1052 [Corrected]

On page 2585, in the third column, under amendatory instruction 2., in the second line, "§ 1926.1051(c)(5)," should read "§ 1926.1052(c)(5), ".

BILLING CODE 1505-01-D

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operation of Federal Credit Unions

Correction

In proposed rule document 91-1660 beginning on page 2723, in the issue of Thursday, January 24, 1991, make the following correction:

§ 701.21 [Corrected]

On page 2728, in the first column, in § 701.21(2)(iii)(D), in the second line, "6 months" should read "60 months".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89-25; Notice 02]

RIN 2127-AC69

Glazing Materials; Head Up Display Systems

Correction

In proposed rule document 91-2021 beginning on page 3235, in the issue of Tuesday, January 29, 1991, make the following corrections:

1. On page 3235, in the second column, under **SUMMARY:**, in the ninth line, "NAPRM," should read "ANPRM,".

2. On the same page, in the same column, in the 16th line, "MHTSA" should read "NHTSA".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8329]

RIN 1545-AN91

Methods of Accounting—Limitation on the Use of Cash Receipts and Disbursements Method of Accounting

Correction

In rule document 91-46 beginning on page 484, in the issue of Monday, January 7, 1991, make the following correction:

§ 1.448-1T [Corrected]

On page 486, in the second column, in § 1.448-1T(g)(3)(ii), the last line should read " * * * * * * ".

BILLING CODE 1505-01-D

federal register

Thursday
February 7, 1991

Part II

Department of Energy

48 CFR Parts 915, 950 and 970
Acquisition Regulation; Interim Final Rule

DEPARTMENT OF ENERGY

48 CFR Parts 915, 950 and 970

Acquisition Regulation

AGENCY: Department of Energy.

ACTION: Interim final rule.

SUMMARY: The Department of Energy (DOE) today publishes an Interim Final Rule which will amend the Department of Energy Acquisition Regulation (DEAR) regarding its contracting practices and fee arrangements with its profit making and fee bearing (hereinafter referred to as "profit making") management and operating (M&O) contractors. These amendments are being made in order to clarify the responsibilities in the performance of these contracts while providing additional incentives to enhance the accountability of M&O contractors to DOE.

DATES: Effective date: The interim final rule shall be effective March 11, 1991.

COMMENT DATE: DOE will accept post publication comments until April 8, 1991.

The rule will become final May 8, 1991, if the agency takes no further action in response to comments.

ADDRESSES: Comments should be sent to: Stephen D. Mournighan, Office of Policy, PR–12, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:
Stephen D. Mournighan, Office of Policy, PR–12, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8182
Lawrence R. Oliver, Assistant General Counsel for Procurement and Finance (GC–34), 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2440.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Comments Received
III. Section-by-Section Analysis of the Interim Final Rule
IV. Procedural Requirements
A. Review Under Executive Order 12291
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under the National Environmental Policy Act
E. Review Under Executive Order 12612
V. Additional Opportunity for Public Comment.

I. Background

Today's Interim Final Rule is the culmination of four separate actions by DOE covering a period of almost one year. These four actions are set forth below.

A. Publication of the Proposed Rule on Accountability.

The first action taken by DOE was the issuance of the Notice of Proposed Rulemaking regarding accountability of profit making M&O contractors (Accountability NOPR) on January 26, 1990 (55 FR 2796). The Accountability NOPR specified conditions under which the profit making M&O contractors would assume the risk of non-reimbursement for certain avoidable costs. The impact of this Accountability NOPR was discussed in detail in the January 26 notice and was summarized again in the Revised Proposed Rule (RPR), which was issued on August 10, 1990 (55 FR 32874).

B. Publication of the Proposed Rule on the New Award Fee Structure.

The next action taken by DOE was the publication of the Notice of Proposed Rulemaking regarding the new award fee structure (Award Fee NOPR) on May 24, 1990 (55 FR 24104). The Award Fee NOPR specified certain changes in the award fee structure, created new categories of facilities operated by profit making M&O contractors and updated the award fee schedule to recognize the effects of inflation from 1983 to 1989. The fee schedule in the Award Fee NOPR was designed to provide DOE with another management tool under which M&O contractors would be encouraged, through financial incentives, to achieve a higher level of performance. The impact of this NOPR was discussed in detail in the May 24 notice and was summarized again in the RPR.

C. Publication of the Revised Proposed Rule.

The RPR, which was issued on August 10, 1990 (55 FR 32874) by DOE, consolidated the Accountability NOPR and the Award Fee NOPR into a single proposed rule and modified the prior proposals in response to comments received. DOE recognized when it began the rulemaking process that exposing an M&O contractor to greater risk would require an examination of whether M&O contractors should ge given an opportunity to earn commensurately greater benefits. Since M&O contractors will assume greater risks while being offered an enhanced award fee structure, the RPR combined both aspects of the new procedures, as does this Interim Final Rule. The RPR did contain certain revisions to both prior rulemaking actions which were incorporated and published in that notice. The RPR also responded to comments which had been provided by the public in response to the publication of the two prior NOPRs. These comments, as well as the impact of the proposed rule, as revised, were discussed in detail. Finally, the RPR also contained a notice of a public hearing on August 28, 1990 and requested that written comments be filed by October 9, 1990.

D. The Public Hearing

On August 28, 1990, a public hearing on the issues raised by the RPR was held by DOE in the auditorium of the Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. The hearing was chaired by DOE's General Counsel, Stephen A. Wakefield, and the Director of the Office of Procurement, Assistance and Program Management, Silas B. Fisher. Representatives of seven organizations spoke at the hearing and raised issues which are considered in this Interim Final Rule, as well as those issues which were raised in the written comments on the RPR.

II. Discussion of Comments Received

Comments on the RPR were provided orally at the public hearing and in writing during the 60-day period permitted in the August 10 notice. Issues that were raised during the public hearing were generally treated with further detail in the subsequently filed written comments. There were no issues raised orally at the public hearing which were not also addressed in the written comments. Therefore, by explicitly addressing the issues raised in the written comments received, issues covered at the hearing will also be encompassed. In promulgating this Interim Final Rule, DOE has reviewed and analyzed the comments that were received both in response to the RPR and to the NOPRs that formed the basis for the RPR. Throughout the year-long process of this rulemaking, all interested parties were given several opportunities to raise their concerns to DOE.

DOE appreciates and finds helpful both the written comments received from the public in response to its RPR and the oral testimony of witnesses at the public hearing. In its internal review process, DOE has weighed the suggestions, underlying rationale and recommended changes of the commenters against the policy reasons which induced the proposed modification. DOE has revised certain provisions contained in the RPR, in whole or in part, where the reasons provided by commenters were found to be compelling or where ambiguities may have existed. DOE did not modify the RPR in those areas which were the

foundation for the achievement of greater contractor accountability or where DOE concluded that its goal of providing additional management tools to promote excellence in performance would be compromised.

DOE's specific responses to issues raised by the commenters to the RPR are addressed to the extent that such comments differ from those provided in response to the Accountability and Award Fee NOPRs or the extent that different arguments have been advanced or facts provided in support of additional changes to the provisions contained in the RPR. However, many of the comments to the RPR substantially replicate comments which have previously been addressed in the issuance of the RPR. For convenience, substantially similar prior comments and the response given by DOE in its issuance of the RPR are repeated in this Interim Final Rule.

This Interim Final Rule will not be imposed upon contracts previously executed, but will only apply to contracts entered into after 30 days from the date of publication of this rule unless the parties have already agreed or subsequently agree to incorporate, or negotiate in good faith, these amendments into their existing contract.

1. Fines and Penalties

The comments on the fines and penalties provision in the RPR primarily reiterated positions previously taken or responded to DOE's answers to earlier comments. However, the following additional comments were received:

Comment: Several commenters were concerned that too much discretion would reside with the Contracting Officer in determining whether fines and penalties are to be allowable costs or are to be non-reimbursable avoidable costs.

The Contract Disputes Act of 1978, Public Law 95–563, 41 U.S.C. 601(a) *et seq.*, places the initial decision-making authority for all claims relating to costs incurred under a contract with the Contracting Officer for a decision. The Interim Final Rule is consistent with this statutorily mandated structure. A contractor who disagrees with the ruling of the Contracting Officer has statutory rights of review. However, creation of another determining official would be time-consuming and, since presumably that official would have less familiarity with the conditions at the site and problems facing the contractor, would not necessarily provide a more objective forum to decide these technical issues.

In the proposed regulations set forth at the conclusion of the RPR, several factors were specified that a Contracting Officer "may" consider when determining whether any claim for payment by an M&O contractor for a fine or penalty should be an allowable cost. DOE agrees with those comments which express concern that these proposed regulations may provide the Contracting Officer with too much discretion. The Interim Final Rule mandates that the Contracting Officer must consider all of the specified factors prior to making an Avoidable Costs decision. Rather than leaving the issue of whether to consider each specified factor within the discretion of the Contracting Officer, the Interim Final Rule mandates that the Contracting Officer "shall" consider each of the enumerated factors in assessing the claim for payment.

Comment: Eight commenters questioned whether the rule implied that the Contracting Officer could authorize unlawful activities.

In the RPR, DOE did not mean to imply that Contracting Officers have the authority to direct contractors to violate the law. They do not have such authority, and any direct order to do so would violate both public policy and explicit contractual requirements that the contractor operate in compliance with the law. It is conceivable, however, that a Contracting Officer could issue a directive, the execution of which could result in an unintended violation of a law or regulation. It was this circumstance which the RPR was intended to address.

There is little difference between this approach and that expressed in the Federal Acquisition Regulation, which also permits reimbursement for fines and penalties incurred as a "result of compliance with specific terms and conditions of the contract or written instructions from the Contracting Officer." FAR 31.205–15, 41 CFR 31.205–15. The rule recognizes the complexity, as well as ambiguity and arguably conflicting directives, of the wide spectrum of environmental laws and regulations which the Contracting Officer is required to interpret.

For the convenience of the reader, earlier comments and DOE responses are repeated below:

Fines and Penalties

DOE proposed that fines, penalties, judgments, settlements and related litigation costs (including attorneys fee) should be unallowable if the fine or penalty resulted from contractor or subcontractor negligence provided that such negligence or misconduct did not occur as the result of complying with formal DOE direction or guidance. Moreover, the breach of the contractor's legal duty giving rise to the liability must involve an area of responsibility clearly placed on the M&O contractor. If a third party, other than DOE, contributed to the negligence or misconduct, the contractor will not be reimbursed by DOE.

Comments: Twelve commenters questioned whether ordinary negligence was an appropriate standard for disallowing the costs incurred by M&O contractors for fines and penalties. It was suggested that DOE should determine that costs are unallowable only when they result from fines and penalties that have been incurred as the result of a knowing violation of the law. Some commenters urged that only those fines and penalties associated with environmental, safety or health violations should be unallowable costs.

DOE intended to take a broader approach to the issue of fines and penalties by not limiting unallowability based upon categories or criminal standards such as a "knowing" violation. In order to encourage a higher standard of accountability with respect to laws and regulations on the part of our M&O contractors, DOE determined that it was most appropriate for contractors to assume direct responsibility for the consequences of their actions in almost all cases. Today's RPR proposes far more specific guidelines for determining whether a fine or penalty is an unallowable cost, while at the same time allowing for an independent determination to be made by the Contracting Officer in each case. For instance, the Contracting Officer can, among other things, take into consideration whether: (i) The contractor voluntarily informed the Contracting Officer in a timely and good faith manner of the condition or activities which later resulted in the fine or penalty; (ii) the contractor was new to the site; (iii) the assessment of the fine or penalty was due solely to the contractor's negligence or wrongdoing, not from a strict liability standard imposed by law; (iv) whether DOE contributed to the contractor's actions or inactions; (v) the act or failure to act resulted from written direction by the Contracting Officer; or (vi) the act or failure to act resulted from the negligence of the contractor or subcontractor, or other third parties. This more flexible approach was also expanded to the determination of all avoidable costs by the addition of new proposed DEAR section 970.3102–22, Determination of Avoidable Costs.

Although this flexibility introduces a certain lack of specificity into the process of cost allowability determination, it permits more flexibility and added fairness for unusual or unforeseeable circumstances. For example, some fines and penalties may have been incurred for reasons that reflect decisions regarding national security. The Contracting Officer can take these and other relevant facts into consideration before making a final decision. However, no situations are anticipated where the Contracting Officer would determine that a criminal fine or penalty is allowable under the new proposed guidelines.

Comments: Seven commenters urged DOE to consider and respond to the situation where DOE orders a contractor to continue to operate after a potential violation is reported by the contractor or alleged by a governmental entity, such as a state

regulatory agency or the United States Environmental Protection Agency.

M&O contractors for DOE facilities occupy an unusual position in the realm of government contractors in that they operate government-owned facilities and have broad responsibility in assisting DOE in performing its mission. Because of this, they lack control over funding, authorizations, and even to some extent the hiring and control of their own employees. Furthermore, they operate in a heavily regulated environment in which statutes, regulations, and contract provisions often mandate the manner in which they can perform their work. DOE, however, has concluded that contractors can and must operate these facilities in full compliance with all laws. DOE never intended to place its contractors in a "no win" situation in which actions that are mandated by the agency or by the contract result in unavoidable fines and penalties that are unallowable costs under the contract. The RPR clearly provides exceptions for extraordinary situations where DOE must require a contractor to perform a specific task with the result that possible violations of law may occur, in order to fulfill the agency's national defense mission. Although a contractor may not be permitted to stop work under extreme circumstances involving national security, the Contracting Officer will, under the RPR, retain the discretion, after evaluation of all of the facts and circumstances, to reimburse the contractor. Moreover, the Interim Final Rule does not make unallowable those fines and penalties which were truly unavoidable by the contractor, such as those resulting from DOE's actions or failure to act. Needless to say, the Contracting Officer has no legal or contractual basis for authorizing contractors to violate public laws and regulations.

Comments: Seven commenters expressed concern over the consequences of a contractor voluntarily informing DOE of a noncompliant situation.

The Accountability NOPR did not adequately address the issue of contractor notification of noncompliance. The RPR guidelines under which the Contracting Officer will consider cost allowability place considerable emphasis on whether a contractor has informed DOE of noncompliance in a timely, good faith manner. Good faith disclosure and self evaluation are key factors to be considered in determining the consequences of the disclosure.

Comments: Three commenters wanted to know how DOE would deal with fines or penalties incurred by a new contractor which recently entered into a contract to operate a facility and presumably needs more time to assess deficiencies and compliance problems.

DOE recognizes the risks and uncertainties inherent in assuming operation of aging facilities at which environmental considerations were not always given their present priority. Start up periods for new contractors will be a major factor to be considered by the Contracting Officers in their evaluation of whether fines or penalties should be allowable costs. A phase-in period, not to exceed one year, may be negotiated into agreements with new contractors at a site. The Contracting Officer may take into account extended periods for conditions which preexisted the contractor's presence and of which the contractor could not reasonably be expected to be aware.

Comments: Two commenters wanted to know specifically whether fines and penalties incurred by subcontractors who are hired by profit making M&O contractors may be considered allowable costs if reimbursed by the prime M&O contractor.

Fines and penalties incurred by M&O subcontractors which would be unallowable if incurred by the prime contractor are not allowable costs under the rule proposed today unless the subcontractor is a nonprofit contractor or a small or small disadvantaged business. Reimbursement of fines and penalties incurred by a subcontractor and which otherwise are unallowable costs is strictly a contractual issue between the prime and its subcontractors.

Comments: Seven commenters expressed concern over the reimbursement of fines and penalties imposed upon a contractor who had previously notified DOE of an instance of noncompliance which was not rectified prior to the imposition of a fine or penalty because of the failure to provide adequate funding.

The Accountability NOPR did not specifically address the situation described by the commenters. While the RPR does not provide for blanket cost allowability in situations where the contractor timely notified appropriate persons of compliance problems, it does allow the Contracting Officer to use discretion in determining that the cost is allowable. This would almost certainly be the case when the noncompliance could have been rectified had adequate funding been available for that purpose. The Contracting Officer may consider all relevant factors in arriving at a decision with respect to cost allowability.

2. Insurance

Under this Interim Final Rule, DOE will be modifying its historical practice under which the government was a total self-insurer of its property to a regime in which the government partially insures its property but requires its contractors to be responsible, under certain circumstances, for damage they cause to that property, subject to limitations. DOE has determined that these changes in the Government property provisions of the DEAR require a modification of DEAR section 970.5204–32, "Required bonds and insurance-exclusive of Government property (cost-type contracts)," in its application to profit making M&O contractors. The existing regulations prohibit a cost-type contractor from procuring or maintaining for its own protection any insurance covering loss or destruction of or damage to government-owned property. Since contractors may now be held responsible for causing certain damages, DEAR 970.5204–32 is modified by the Interim Final Rule to allow profit making M&O contractors to purchase insurance, at their own expense and not as an allowable cost, for protection against loss of or damage to Government property. The current DEAR provision remains unchanged for nonprofit M&O contractors since the Government will continue to self insure against loss or damage which may result regarding property within control of those contractors.

The comments on the insurance provisions contained in the RPR primarily reasserted comments previously urged in the Accountability NOPR or responded to DOE's answers to earlier comments. However, the following additional issues were raised:

Comments: Four commenters asserted that DOE was declining to provide reimbursement for insurance costs on the apparent theory that the existence of insurance creates an incentive for contractor negligence. According to these commenters, this anti-insurance idea is an archaic concept that has been discredited by experience and therefore should not form a basis for holding insurance costs unallowable.

These commenters incorrectly assume that DOE's primary rationale for making insurance costs unallowable was the notion that insurance encourages poor performance or lower standards of care. To the contrary, DOE has no objection to its contractors obtaining insurance if they wish to do so. However, it would be inconsistent for DOE to disallow a cost incurred in performing work under the contract and then reimburse the contractor for the cost of insuring against that disallowed cost. To allow recovery of these costs would have the effect of neutralizing the very incentive for accountability DOE is attempting to foster in its M&O contractors. It would mislead the public to say that a contractor is being held accountable for its actions when, in fact, the taxpayers are paying for the insurance costs to protect the contractor from the same risk. In fact, the additional expense of insurance premiums would likely be greater than if the government remained a self-insurer and continued to indemnify M&O contractors against their avoidable costs.

Although DOE rejects the view that its contracting practices may not deviate from the Federal Acquisition Regulation (FAR), this provision is consistent with the FAR, which disallows reimbursement for insurance premiums on policies covering unallowable costs. (See, *e.g.* FAR 31.205–19(a)(2)(iv).)

Comments: Two commenters stated that DOE's assumption that insurance costs should be offset against profit is fallacious and represents a

misunderstanding of the commercial world. In their view, in the commercial arena insurance premiums are a cost factor used to establish the price to be charged the customer and are not an offset against profit.

While DOE agrees that insurance is a cost factor reflected in the price of goods and services, the ultimate determinant of the price charged is the market place, not an accountant's calculation of costs incurred. The market may or may not permit full recovery of every cost incurred in a commercial venture. The extent to which cost recovery is permitted will have a direct bearing upon a firm's profit. The commercial world neither guarantees profits nor full cost recovery. In DOE contracts, however, recovery of most costs is assured. To the extent they are not allowable, costs must be an offset to fees, or profits, otherwise available. The increase in the Basic Fee and the Award Fee available is intended to provide compensation for the additional risks incurred by profit making contractors, including the cost of insurance, in undertaking a contract which does not provide for allowability of all costs. The spreading of risk through insurance is a well understood and accepted business practice which is embraced by DOE. DOE, however, will not both pay a higher price (or fee) for a perceived greater risk involved in the providing of services by profit making M&O contractors and also reimburse those contractors for the cost of insurance premiums to protect against the risk which the increased fees are designed to compensate. This would create an unacceptable double payment by the taxpayers.

Comments: Six commenters believed that DOE should not deviate from the FAR on payment for insurance costs. These commenters claimed that this practice would cause a lack of uniformity from facility to facility because the Contracting Officer has too much discretion in determining whether or not to treat particular costs as allowable.

Contrary to these commenters' contentions, the FAR insurance provision does not require the Government to reimburse a contractor's insurance costs, but instead leaves it to the Contracting Officer's discretion. (See FAR 28.301(a)(2) which indicates that "the Government reserves the right to disapprove the purchase of any insurance coverage not in the Government's interest.") Therefore, this provision is at variance with the FAR only to the extent that it creates a presumption against the allowance of costs for certain types of insurance coverage. This presumption can only be overcome by a specific written direction of the Contracting Officer requiring such coverage, while the FAR would require action to disapprove the purchase.

Comments: One commenter wanted the Government to permit insurance costs to be applied against the liability ceiling.

For the reasons explained in response to the first set of comments under "Insurance," to allow the insurance costs to be applied against the liability ceiling would defeat DOE's purpose. Ceilings on exposure to unallowable costs are designed to limit potential losses in areas where the risks may be difficult, if not impossible, to quantify. Insurance premiums, however, are quantifiable and their incurrence is within the control of the contractor, who may elect not to purchase insurance. Furthermore, if avoidable costs are insured at the expense of the contractor, it would seem appropriate that any benefits resulting from the policy would accrue to the benefit of the contractor.

Comments: One commenter requested clarification on whether or not Worker's Compensation Insurance is an allowable cost.

This type of insurance does not provide coverage for costs which otherwise would be unallowable. Legally required contributions to Worker's Compensation plans and other similar types of required insurance remain an allowable cost under DEAR 970.5204–13(d)(8)(ii). The types of insurance which are unallowable are those which would insure the contractor against liabilities incurred under the provisions of the DEAR promulgated in this rulemaking.

Comments: One commenter felt that professional liability insurance should be an allowable cost.

Because professional liability insurance is intended to protect against damages arising out of negligent acts, which may be avoidable costs under the Interim Final Rule, the insurance to protect against such loss is also unallowable, for the reasons stated in response to the first set of comments under "Insurance."

For the convenience of the reader, earlier comments and responses on the insurance issue are repeated below:

Insurance

The Accountability NOPR provided that the cost of insurance which would protect or reimburse the contractor against an unallowable cost, is also an unallowable cost.

Comments: Three commenters wanted to know why DOE is unwilling to pay the costs of insurance for protection against costs and liabilities which are now being made unallowable, particularly in light of the fact that the Government has in the past been self-insured. These commenters argued that the government's practice of self insurance results in lower costs to the taxpayers.

It would be inconsistent for DOE to disallow a cost and then reimburse the contractor for the cost of insuring against that disallowed cost. To provide otherwise would have the effect of neutralizing the very incentive for accountability DOE is attempting to foster in its M&O contractors. It would greatly mislead the public to say that a contractor is being made accountable for its actions when in fact the taxpayers are picking up the tab for the insurance costs to protect the contractor from the same risk. In fact, the additional expense of insurance premiums would likely be greater than if the government remained a self-insurer and continued to indemnify M&O contractors against their avoidable costs. The RPR places certain risks on the contractor when the contractor is in a better position to evaluate the risk and take the necessary actions to avoid, minimize or eliminate those risks. DOE simply cannot reimburse the contractor for the costs of insurance against the very risks we are asking the contractor to assume. DOE is determined to depart from the policy of self-insurance because the goal of this rulemaking is greater accountability on the part of M&O contractors, particularly in the areas of environment, safety and health. In any event, the outside limits of the contractors' liability is known and fixed by the liability cap. In the event the contractor elects to insure against nonreimbursable costs, the premiums for such insurance are properly a portion of the contractor's overhead, to be offset against his profits in the same manner as most commercial manufacturers are required to do.

Comments: Eleven commenters asked whether increased award fees will cover increased costs due to additional risks placed on M&O contractors and whether DOE will be paying an appropriate price for greater contractor accountability.

DOE appreciates the increased exposure potentially imposed upon profit making M&O contractors by the Accountability NOPR. These greater risks require that the contractor have the opportunity to earn enhanced award fees. It is DOE's belief that the higher fees proposed in the Award Fee NOPR provide the fair profit expectation for these contractors in return for their increased risks and insurance costs. DOE has determined that the potentially increased costs to the Government under the Award Fee NOPR are adequately balanced if the resulting increase in contractor accountability also provides substantial benefits to society, particularly with respect to environment, safety and health.

Comments: Two commenters pointed out that under the Accountability NOPR, contractors would not be reimbursed for the cost of payment and performance bonds, which may be necessary in order to obtain other insurance.

The Accountability NOPR did not specifically address this issue. Under the RPR, it is proposed that Contracting Officers would have the authority to reimburse a contractor or subcontractor for obtaining payment or performance bonds and insurance, in special situations, when obtained at the Contracting Officer's specific written direction after a determination that the costs are necessary and in the best interest of the Government.

Comments: Six commenters stated that in some situations insurance may be commercially unavailable. In such cases contractors might be unwilling to do business with DOE without indemnification.

DOE recognizes that in some cases insurance may be commercially unobtainable. For example, certain environmental statutes place significant regulatory requirements on contractors. However, the contractors are not being asked to incur unlimited exposure; there is a ceiling on contractor liability, as discussed below. In effect, the profit making M&O contractor is being asked to incur the deductible portion of an insurance policy while the government remains the self-insurer for the unlimited remaining portion of any exposure.

3. Liability Cap

The comments on the liability cap in the RPR primarily responded to DOE's answers to earlier comments. However, the following additional comments were received:

Comments: Generally, commenters clearly understood that the liability ceiling proposed in the RPR at section 970.5204–55, "Ceiling on Certain Liabilities for Profitmaking Contractors," would not apply to criminal fines and penalties and related costs of litigation or to the contractors' risk under the Major Fraud Act of 1988, 41 U.S.C. 256 (Major Fraud Act) or the civil and criminal penalties provisions of the Price-Anderson Amendments Act of 1988, 42 U.S.C. 2273, 2282 (Price-Anderson Amendments Act). One commenter, however, urged that if contractors are to have a cap that is more than illusory, that cap must cover all costs incurred under the Price-Anderson Amendments Act of 1988, the Major Fraud Act and other statutory exclusions, as well as the additional costs contractors are being asked to assume under any new rule which is finally promulgated. That commenter proposed that those costs which are made unallowable by statute should be included first for purposes of accumulating unallowable costs. Thereafter, the costs made unallowable by these and other DOE regulations should be added in calculating whether the cap has been met. Alternatively, in the view of that commenter, any increase in fee should also contain an incrementally adjusted upward amount to account for costs which are not within the cap.

Statutorily mandated non-reimbursable costs cannot be limited by an administratively established ceiling. To permit any costs which are otherwise unallowable to be included in the calculation of a liability ceiling, the purpose of which was to limit exposure resulting from this rule, would subvert that policy. Only those unallowable Avoidable Costs created by this Interim Final Rule will be included in and subject to the liability cap. All other unallowable costs, whether mandated by statute, such as the Major Fraud Act of 1988 or the Price-Anderson Amendments Act of 1988, or regulations not resulting from this Interim Final Rule, will not be included in determining when the liability ceiling has been reached.

DOE, moreover, disagrees with the comment that the liability ceiling is illusory if it does not cover all costs incurred under the Price-Anderson Amendments Act of 1988, the Major Fraud Act of 1988 and other statutory exclusions. The Interim Final Rule creates a new class of unallowable costs, which are defined as Avoidable Costs. By its provisions the Interim Final Rule compensates the M&O contractor for the risk of incurring these new costs. The liability ceiling was a major consideration in determining the fee structure. It would be inconsistent for DOE to now change its balance of risk and reward by encompassing the entire universe of Federal, state and local statutory and regulatory exposure faced by an M&O contractor within a ceiling designed to define the limits of risk being assumed by that contractor.

Comments: One commenter complained that the RPR was unclear regarding which unallowable costs will be subject to the ceiling. The commenter was particularly concerned that litigation and claims costs be subject to the cap.

Section 970.5204–55 identifies those costs which are subject to the ceiling, including the costs of defending third party claims. To avoid any possible confusion, however, section 970.5204–31, "Litigation and Claims," has been added to the list of unallowable Avoidable Cost provisions to which the ceiling applies.

Comments: Nine commenters suggested that a liability cap should be applied to subcontractor costs. They proposed that the cap should be the subcontractor's fee.

DOE agrees with these commenters and, accordingly, has added a paragraph to section 907.5204–55 which establishes a ceiling on subcontractor liability. The rationale for this decision is set forth below in the "Subcontractors" section of the preamble.

For the convenience of the reader, earlier comments and DOE responses are repeated below:

Liability Cap

The Accountability NOPR placed a ceiling on the liability of M&O contractors for unallowable avoidable costs incurred equal to the maximum potentially available award fee for the applicable six month evaluation period. The contractor was required to provide a guarantee that it could satisfy any current liability or potential future liability discovered after the award fee period or after the contract terminated or expired.

Comments: Five commenters argued that the liability cap should be lower, and suggested a cap consisting of the award fee actually earned in the applicable period. On the other hand, two commenters argued that liability should be without limit, especially in the case of criminal fines or penalties.

Under the RPR, there is no limitation on the amount of criminal fines and penalties which may be disallowed. As for other unallowable costs and expenses resulting from the application of this RPR, the liability cap has been set in the RPR at the amount of the actual award fee earned plus the actual basic fee earned during the six-month award fee period in question. DOE has determined that a limitation on disallowance of the entire award fee available is no longer appropriate since the restructuring of fees under the Award Fee NOPR. The RPR, therefore, limits the contractor's risk to the fee or profit earned. The costs imposed or incurred under the Price-Anderson Amendments Act and the Major Fraud Act of 1988, section 8, 41 U.S.C. 256 (Major Fraud Act), will not be limited except as provided in regulations implementing those provisions.

Comments: Four commenters wanted to know what type of financial guarantee would have to be provided by the M&O contractors, and in what amount.

DOE has left the amount and nature of the financial guarantee to the discretion of the Contracting Officer after consultation with the contractor. In addition, under this proposed rule the contractor will have the option of authorizing DOE to retain a percentage of its fee to satisfy the financial responsibility requirements. M&O contractors operate under a wide variety of conditions with regard to risk. The contractors often have widely disparate financial structures. Some contractors are new, while many have operated their respective facilities for long periods of time. This may affect their perception of the risk being undertaken. The appropriateness of a financial guarantee is a business decision to be made on a case-by-case basis. For example, a contractor may decide a retainage of a percentage of the fee is appropriate (or invoicing for less than the full fee earned). In addition, other types of arrangements a contractor may wish to consider include (i) Letters of credit, (ii) corporate guarantees from financially responsible parent corporations, (iii)

performance bonds, or (iv) other similar financial arrangements. The financial responsibility obligation will remain for up to one year after the expiration or termination of a contract.

Comments: Three commenters argued that because the liability cap is tied to the award fee, the contractors will be driven to negotiate for larger basic fees relative to the award fees, reducing the incentive effect of the award fee.

Under today's RPR, as indicated above, it is proposed that the contractor's risk be limited to the award fee and basic fee actually earned. Therefore, the incentive for seeking a reduced award fee in exchange for a larger basic fee is eliminated. The Award Fee NOPR, in any event, did not allow the contractor the flexibility to negotiate award fee-basic fee percentages. Today's RPR retains that concept.

Comments: Eleven commenters raised questions as to exactly how the liability cap for a particular period will correspond to costs or liabilities due to events that are not discrete and severable, and the length of time that such liability will continue into the future.

The Accountability NOPR anticipated this issue and provided as follows:

In the case of continuing activities of the contractor which occur over a number of evaluation periods and result in costs or liabilities described above, the potential financial risk of the contractor shall be limited to the amount of the award fee which was available in the single evaluation period when the incident or event giving rise to the contractor's disallowed costs or expense took place. If it is not possible to relate or reasonably allocate particular activities to individual evaluation periods, the financial risk of the contractor shall be limited to the amount of the award fee which was available in the evaluation period when the amount of nonreimbursable costs or liabilities were finally determined. If such determination is made following the expiration of a contract, or the contractor is otherwise replaced, the available award fee for the last evaluation period that the contract was in effect shall be utilized, after deducting such disallowed costs as were previously charged to that period.

Today's RPR retains and refines this concept, but references to "available" award fee will be changed to "actual" fee earned.

DOE has determined that a period of up to one year after contract expiration or termination is an appropriate period of time for the contractor to continue its financial responsibility obligation to assure payment to DOE of avoidable costs, such as damage to government property. However, the authority of DOE to refuse to reimburse a contractor for otherwise disallowed costs, such as fines and penalties or third party liability, shall continue indefinitely.

Comments: Two commenters argued that since the extent of a contractor's liability is going to be tied to the available award fee, the award fee determination should be subject to the disputes clause.

Under today's RPR, the limitation of liability has been tied to the amount of fee actually earned for an award fee period, thereby significantly reducing the risk to the contractor. It is important to distinguish between the mechanism used to determine the limitation of liability (which happens to be the amount of fee actually earned) from the disallowance of certain avoidable costs and the obligation to pay such costs. The latter cost disallowance is clearly subject to the Contract Disputes Act of 1978, Pub. L. No. 95–563, 41 U.S.C. 601, *et seq.* (Contract Disputes Act). The award fee determination, on the other hand, is governed by a different set of rules, including the Department's discretion, and is made independent of any cost determinations which are subject to the disputes clause.

Comments: Eight commenters noted that since costs and liabilities naturally flow down from M&O contractors to their subcontractors, DOE should establish a rule with respect to a liability cap for subcontractors who will not otherwise be able to continue to do business with DOE M&O contractors.

Disallowed costs caused or incurred by profit making subcontractors are within the M&O contractor's limitation of liability. Subcontractors are free to negotiate their contractual relationship with prime contractors in order to delineate the party who bears the ultimate financial exposure for disallowed costs. If fewer subcontractors are willing to enter into arrangements with primes, primes will have to offer more favorable conditions. In any case, the fee received by subcontractors from the prime is an allowable cost under the prime contract. The relationship between a prime and its subcontractors (whether cost-plus or fixed-price) should not be controlled by DOE, except to the extent that Small and Small Disadvantaged Businesses are excluded from the cost disallowance provisions.

4. Litigation Costs and Control

The comments on litigation costs and control of litigation in the RPR primarily responded to DOE's answers to earlier comments. However, the following additional comments were received:

Comments: Several commenters requested that DOE further define what it meant by "costs of litigation." That phrase is used when referring to the costs for which the Government may assume responsibility should the Contracting Officer choose to direct or approve the litigation.

In response to this concern DOE has added a definition of "costs of litigation" to be included at § 970.5204–31(c). The new language is very similar to language currently used in part 31 of the Federal Acquisition Regulation implementing the Major Fraud Act.

Comment: One commenter felt that further discussion was needed on what the RPR meant by "control."

The word "control" does not appear in the proposed regulations on "Litigation and Claims." However, the concept of DOE assuming or retaining control of litigation is referred to in the preamble of the RPR. The text of the proposed regulation refers to the Contracting Officer directing or approving the litigation. For purposes of clarification, it is contemplated here that the Contracting Officer's direction of the litigation may not involve control of the day-to-day minutiae of the litigation process, which generally would be inconsistent with the general scope of work contained in most M&O contracts, but could consist of overall policy guidance in the defense of litigation. However, this does not mean that the Contracting Officer would be precluded from exercising control over any or all aspects of the litigation should such involvement appear to be in the best interest of the Government. As is usual with M&O contracts, the Contracting Officer must exercise his or her judgment as to the level of involvement necessary in the administration of an activity under a contract. Because the phrase "not choose to direct," in the RPR's Litigation and Claims provision, DEAR 970.5204–31, is confused with the word "control," DOE has revised that phrase in subsection (b)(3) to clarify that it encompasses both approval and direction of the defense. It does not mean to suggest that the government will decline responsibility for costs of litigation in all situations in which DOE simply does not have the resources or desire to direct every specific aspect of the litigation.

It is expected that Contracting Officers will give wide discretion to M&O contractors to "manage" litigation which arises in the course of normal business operations within the scope of the contract. It would be inconsistent with the overall philosophy of M&O contracts for the Contracting Officer to either micro-manage contracting litigation arising under the contract or refuse to initiate litigation which, in the normal course of business, would be in the best interest of the Government to undertake. It is not possible to contemplate every factual circumstance which might arise under all DOE M&O contracts. It is sufficient to note that some discretion must be left to the Contracting Officers to administer their contracts.

Comments: Another commenter noted that the rule might tend to prompt early settlements to limit costs when it might be in the best interest of the Government to continue the litigation.

Contractors might in some instances determine it is in their best interests to settle cases in order to limit costs which might not be reimbursed by the Government. However, a contractor who settles litigation without the prior

approval of the Contracting Officer will jeopardize his ability to recover those settlement costs. If the Contracting Officer approves the settlement, the regulations provide that the contractor shall also reach agreement with the Contracting officer as to the appropriate share of costs to be borne by each party. In every instance there are economic benefits to be weighed by the contractors as well as by the Government. The Contracting Officer is not compelled by the rule to accept the contractors determination regarding conduct of litigation, including the appropriateness of any settlements. All litigation must be reported to the Contracting Officer. It is the responsibility of the Contracting Officer and the DOE legal adviser assisting the Contracting Officer to determine the appropriate course of action for the Government.

Comment: Eight commenters were concerned that the language of the rule "offers a wide-open exemption to the limitation on reimbursement. A Contracting Officer can make the Government liable for almost any claims or damages, regardless of the contractor's culpability, and regardless of whether such amounts would otherwise be reimbursable, simply by electing to assume the direction of the defense of a case."

It would create an irreconcilable conflict of interest for the Government to assume defense of a lawsuit brought against its contractor and then, when faced with an unfortunate result, to deny responsibility to reimburse its contractor. A Contracting Officer must be able to consider all aspects of a case when deciding whether to assume the direction of the litigation. The discretion of the Contracting Officer in this area is considered important to the interests of the Government. Presumably, this discretion will be exercised only when direction of the defense is considered to be in the Government's interest and after consultation with appropriate DOE legal counsel. Although this comment raises concerns that this discretion may be exercised too frequently in favor of the contractor, many other commenters, as noted previously, are concerned that it will be exercised too sparingly. As in all Government contracts, the law places the responsibility on the Contracting Officer to make decisions for all kinds of legally binding actions, and provides such official wide discretion. This Interim Final Rule comports with that concept.

Comment: Eight commenters indicated that they were concerned about the prospect of DOE electing to take over a contractor's defense in any action, including one brought by another agency of the Federal Government.

DOE agrees that one governmental agency should not litigate against another under the Unitary Executive theory. We note further that because the conduct of litigation in which the Government is interested is reserved to the Department of Justice (28 U.S.C. 516), the situation posited by the comment should not arise. Finally, DEAR subsection 970.5204–31(b) specifically provides that DOE may not be assigned or subrogated to the rights or claims of a contractor where such rights or claims are against the Government.

For the convenience of the reader, earlier comments and DOE's responses are repeated below:

Litigation Costs and Control

In the Accountability NOPR DOE did not provide draft language concerning litigation costs and control of litigation. DOE, however, did solicit comments from the public on the issue of litigation control and costs. DOE specifically asked whether a contractor's refusal to allow DOE to control specific litigation should result in a waiver of claims for reimbursement, even in those cases where the ceiling on disallowance has not been reached.

Comments: Ten commenters felt that in those situations in which DOE retains control of the litigation, DOE should assume financial liability.

The Department is in agreement with the commenters on this issue. If DOE assumes control of litigation, it is appropriate that the agency should also assume liability for litigation costs and potential damages notwithstanding the ceiling or potential deductible. This new approach is reflected in today's RPR. It would be inappropriate for DOE to control a contractor's litigation, including its strategy, its expert witnesses, its defenses and even its selection of private counsel and then disallow the costs. Consequently, costs, including judgment or settlement amounts, incurred in cases where DOE controls or directs the litigation will be reimbursable in their entirety and not subject to the deductible based upon the amount of fee earned. If litigation is settled with DOE approval, the apportionment of costs and the settlement amount will be a matter of negotiation between the contractor and the Contracting Officer. This aspect of the RPR is subject, of course, to the prohibitions contained in the non-reimbursement costs provisions of the Major Fraud Act.

Comments: Three commenters wanted to know who would bear the expense of litigation while negligence remains to be determined.

Under the Accountability NOPR, the contractor would have to pay for all costs associated with the litigation and seek to recoup those costs from the Government afterward. The RPR retains this system of reimbursement where the Contracting Officer initially determines that these are avoidable costs and thus unallowable. The contractor, however, may request that DOE approve a settlement at any time during the litigation process. If DOE approves the settlement, the contractor and DOE will agree on the appropriate allocation of financial responsibility.

Comments: Five commenters argued that contractors should not be deemed to have waived their rights to reimbursement of litigation costs when they retain control of the litigation.

Under today's RPR, it is proposed that a contractor's retention of control of litigation does not automatically result in loss of rights to reimbursement of litigation costs or judgment amounts which are below the liability cap. Possible loss of rights to reimbursement of litigation costs and judgments based upon findings of the contractor's negligence or wrongdoing will be determined by the Contracting Officer, with assistance from DOE's legal staff, independent of any administrative or judicial finding of negligence or other wrongdoing. Under today's RPR, the contractor is eligible, but not assured, of reimbursement for the costs of litigation when the outcome of the litigation is favorable. Reimbursement, however, is still subject to the nonreimbursement provisions of the Major Fraud Act.

Comments: Three commenters asked questions relating to the handling of litigation costs involving subcontractors under the new rules.

Under today's RPR the cost of litigation incurred by subcontractors will be reimbursed to the same extent that prime contractors would be reimbursed.

Comments: Three commenters argued that new contractors should not be liable for costs of litigation due to legal actions resulting from pre-existing site conditions where the contractor inherited problems that resulted in the litigation.

DOE agress, subject to a reasonable transition period. Under today's RPR, if the contractor is not in any way responsible for the environmental damage that is the basis for the legal action, the contractor will either not be named a party to the action or not be held liable. In the latter case, the contractor would be able to recoup the costs of litigation from DOE. In those cases in which a statute imposes strict liability, the law has been designed to place legal responsibility on any party that had an opportunty to avoid the damage or loss, so fault is not an issue in such cases and under the RPR the Contracting Officer will determine whether reimbursement by DOE is appropriate. Finally, the RPR includes a phase-in time period before full contractor responsibility for the new site (not to exceed one year).

5. Government Property

DOE has determined that the originally proposed changes contained in the RPR to the Government property provisions of the DEAR, and retained in this Interim Final Rule, require a modification of DEAR section 970.5204–32, "Required bonds and insurance-exclusive of Government property (cost-

type contracts)," in its application to profit making M&O contractors. DEAR 970.5204–32 is modified by the final rule to allow profit making M&O contractors to purchase insurance, on a nonreimbursement basis, to protect the contractor from loss or destruction of, or damages to, government property, to the extent the contractor may incur unallowable or non-reimbursable costs. The current DEAR provision remains unchanged for nonprofit M&O contractors.

With one exception, the comments on the Government property provisions in the RPR were substantially the same as the comments received in response to the Accountability NOPR.

Comment: One commenter indicated that the provisions of the RPR were not stringent enough in addressing property damage since non-reimbursement required a finding that costs resulted from circumstances clearly within the contractor's sole and exclusive control.

DOE designed the Government property provision to encourage contractors to achieve higher standards to efficiency. This required a balance between the old rule in which the Government absorbed all losses for damage or theft of Government property and a rule which would hold the contractor more responsible for its own acts or omissions. DOE does not agree with the concept that nothing is within the contractor's exclusive control "since DOE ultimately governs all of their activities." However, appropriations and necessary authorizations may be required from DOE. To the extent these have been requested by the contractor but are not forthcoming, DOE does not believe it would be appropriate to place responsibility upon the contractor. DOE believes that the new property provision will effectively and efficiently improve contractor performance by balancing these two compelling issues.

For the convenience of the reader, the earlier comments to the Accountability NOPR and DOE's responses in the RPR are repeated below:

Government Property

The Accountability NOPR provided that direct costs and expenses resulting from damage to Government property as a direct result of contractor or subcontractor ordinary negligence should not be reimbursed.

Comments: Ten commenters objected to the proposal because it deviates from standard government practice.

DOE recognizes that standard government contracts generally do not make contractors liable for damage to government property. However, DOE M&O contracting has historically been a unique area of government contracting, one with a discrete set of rules and regulations compared to those applied in more traditional government contracts. If the agency is to achieve its goal of inducing its contractors to greater excellence in performance, it will be necessary to shift certain risks to the contractor that have traditionally been borne by the Government. Consequently it will be necessary to be different from the FAR to the extent that those regulations do not contemplate such a shift in responsibility.

Comments: Five commenters argued that damage to, and loss of property are ordinary costs of doing business in the everyday world. These commenters felt that such costs are likely to be less in the long run than the costs necessary to implement measures designed to avoid them.

DOE firmly disagrees with these comments. The fact is that while such damages and losses may be deemed the cost of doing business, they are borne by the party responsible in the ordinary business world. A commercial manufacturer would expect to add such expenses to its overhead, which in turn would tend to reduce its profits. In conducting DOE's business in a manner more like that of the private sector, DOE anticipates achieving results that demonstrate higher standards of efficiency and better performance. By shifting these losses to the contractor, DOE also expects a benefit in the form of protection against even greater losses over the long term. DOE does not anticipate approving impractical measures proposed to assure that government property is not damaged or lost.

Comments: Five commenters maintained that M&O contractors cannot adequately protect against losses to government property because they do not control use, maintenance, repair and replacement of the property.

In fact, DOE contemplates holding contractors responsible only for losses to government property due to negligence or theft in those instances where such acts, and the property, are totally under contractor control. Losses and expenses resulting from ordinary wear and tear would continue to be reimbursable or not charged to the contractor's account.

Comments: Four commenters asked for clarification on how the property in question would be valued. They pointed out that, in many instances, the conditions and value of the property over which they assume control are not known.

Although the final decision will be left to the Contracting Officer's discretion in determining the amount of damage of government property, DOE believes that the depreciated value (or book value, as appropriate), as opposed to replacement cost, should be determinative. The general objective will be to place the damaged property in the same working condition that existed prior to the damage being incurred, but not to place it in a new or improved condition.

6. Subcontractors and Environmental Restoration Contractors

Subcontractors

In the Interim Final Rule, DOE modifies the limitations on the responsibility of M&O contractors for Avoidable Costs resulting from the fault of their subcontractors. Under this Interim Final Rule M&O contractors are responsible for Avoidable Costs incurred by their subcontractors only if the M&O contractor was responsible, in whole or in part, for the actions or inactions of the subcontractor which resulted in the Avoidable Costs. The small business and small disadvantaged business concern who is a subcontractor was exempted from the RPR's Avoidable Cost and insurance provisions. That exemption is retained in the Interim Final Rule.

Comments: Eleven commenters argued that the allocation of risk between prime contractors and subcontractors needed further clarification since otherwise a subcontractor could be required to indemnify the M&O contractor for Avoidable Costs limited by the liability cap of the M&O contractor, without regard to the relative contract size of the subcontractor.

DOE agrees with these commenters. Both M&O contractors and subcontractors felt that DOE should provide some additional protection to subcontractors and take a role in defining the relative risks to be borne between subcontractors and M&O contractors. As a result of the extensive comments on this issue, DOE has made changes to DEAR section 970.5204–55 and has provided a liability cap for subcontractors equal to the subcontractor's profit during the M&O contractor's relevant six-month evaluation period. In addition, DOE will reimburse the M&O contractor for Avoidable Costs incurred by the subcontractor which exceed the subcontractor's liability cap, unless the M&O contractor contributed, in whole or in part, to the incurrence of the Avoidable Cost by the subcontractor. If the M&O contractor contributed, in whole or in part, to the incurrence of Avoidable Costs by its subcontractor, the M&O contractor remains responsible to DOE for the Avoidable Costs incurred, up to its own liability cap, but is limited in seeking reimbursement by the level of its subcontractor's liability cap.

To insure that the subcontractor is only obligated to pay Avoidable Costs up to the level of its profit, when a subcontractor's Avoidable Costs in amounts above its liability cap are reimbursed by DOE to the M&O contractor, the subcontractor shall receive a parallel reimbursement from the M&O contractor or, the M&O contractor shall be required to pay such

costs directly, as the situation may require.

Comments: Nine commenters stated that subcontractors should be provided a liability cap that should be set at the fee the subcontractor earns.

DOE agrees with these comments. Commenters argued that subcontractors cannot continue to participate in DOE contracting without a reasonable liability cap. In the RPR, DOE had limited exposure for each award fee period to the total fees earned by the M&O contractor without providing any limitation for liability, other than that overall ceiling, for any individual subcontractor. Since the M&O contractor is made responsible for Avoidable Costs which are the fault of its subcontractors, it would be reasonable to assume that M&O contracts would seek indemnity from their subcontractors for Avoidable Costs. If the limitation on this indemnification is the total liability cap of the M&O contractor, which bears no relation to the size of the subcontractor's profits, many subcontractors may be unable or unwilling to participate.

As a result of the extensive comments received, DOE has amended DEAR section 970.5204–55 as published in the RPR to provide a cap for subcontractors equal to the subcontractor's earned fee, or 15% of the total dollar amount of the subcontract price in those instances, such as fixed price contracts, where the Contracting Officer cannot reasonably determine what the actual profit was.

Comments: Six commenters felt that DOE should establish a direct relationship between itself and the subcontractors of its M&O contractors.

It would not be appropriate for DOE to alter the contractual relationship between the M&O contractors and their subcontractors. Such a change would alter the traditional responsibilities of the M&O contractor who has privity of contract with its subcontractor. Furthermore, DOE wishes to limit its interference with the effect of market forces on these relationships beyond the role of approving any subcontracts prior to execution by the M&O contractor.

Comments: Five commenters argued that a prime contractor should not be held responsible for the acts of a subcontractor unless those acts arose solely as a result of the M&O contractor's negligence in carrying out its obligations under the contract.

DOE partly agrees with these comments. The M&O contractor is in the best position to monitor its employees and subcontractual arrangements and to make any changes which are necessary to assure excellent performance under its contract with DOE. The purpose of this rulemaking is to make contractors more accountable for the actions of their employees and subcontractors. Therefore, the commenters' suggestion that an M&O contractor should only be responsible for its subcontractors if the M&O contractor is solely at fault in contrary to the fundamental purpose of this rulemaking. In addition to the limitation set forth above on the subcontractor's liability, however, M&O contractors will be responsible for the Avoidable Costs caused by its subcontractors only in those instances where the M&O contractor contributed, in whole or in part, to the negligence of its subcontractor.

Comments: Five commenters stated that M&O contractors did not have the control over subcontractors, especially sole source suppliers, that the RPR implied.

As discussed in the DOE response to the preceding comment, the M&O contractor is the party to the best position to monitor its subcontracts and implement changes as needed. Part of the overall management responsibility of an M&O contractor is to elicit an excellent performance from its subcontractors.

Comments: Five commenters argued that the current cost principles, including insurance provisions, should continue to be used for subcontractors.

Since much of the work to be performed under the M&O contract is subcontracted by the M&O contractor, it would defeat the purpose of this rule to make M&O subcontractors exempt from today's rulemaking. If such an exemption were provided, a significantly larger portion of the work under the M&O contract would be subcontracted as a way of avoiding the responsibilities imposed under this rule. Today's Interim Final Rule, however, does limit the liability of subcontractors as indicated above, although the M&O contractor will continue to be liable to the extent its acts or omissions contribute to the subcontractor's incurrence of Avoidable Costs.

Environmental Restoration Contractors

Several comments were directed to DOE's response to comments on environmental restoration contractors contained in the RPR. DOE's response in the RPR indicated that the issue of "indemnification" for environmental restoration contractors was being considered by a separate task force within DOE and that the RPR was not attempting to address coverage of clean up contractors under this rulemaking. The following additional comments were received:

Comments: Five commenters stated that clean up contractors need non-nuclear indemnification.

The volume of comments on this issue during the stages of this rulemaking has heightened DOE's awareness of contractors' concerns on this issue. DOE currently has a task force examining this issue and is analyzing a number of options available. A policy decision on this issue has not been made and the exact form or extent of protection to be provided clean up contractors cannot be addressed at this time.

To the extent, however, that environmental restoration subcontractors (or contractors) are not M&O contractors and are not subcontrators to M&O contractors they are not covered by this Interim Final Rule.

Comments: Three commenters felt that customized contracting policies should be developed for clean up contractors.

DOE has a task force that has been examining this issue and, pursuant to a **Federal Register** notice published October 31, 1990, at page 45844, a public meeting was held November 15, 1990, in Orlando, Florida to receive public comments on DOE clean up contracting.

Comments: Three commenters stated that environmental restoration contractors should not be covered by the rule.

As indicated above, this rulemaking covers M&O contractors and does not effect DOE's procurements using other contractual vehicles. To the extent that environmental restoration services are procured directly by DOE non-M&O contractors, the rules promulgated today will not effect those environmental restoration contracts.

Comments: Three commenters felt that DOE should take a role in establishing the relationship between the M&O or other prime contractor and the environmental restoration subcontractor.

As discussed in the response section under "Subcontracts," it is generally not DOE's policy to create a direct relationship with subcontractors to M&O contractors with which it has no privity of contract. This is also the case for subcontractors to non-M&O type prime contractors.

The issue of environmental restoration contractors was not specifically raised or addressed in the Accountability NOPR.

For the convenience of the reader, the earlier comments and DOE's response regarding subcontractors and environmental restoration contractors, are repeated below:

Subcontractors

In the five major categories of M&O contractor liabilities for avoidable costs, the Accountability NOPR made M&O contractors responsible for the acts of its subcontractors.

Comments: Sixteen commenters pointed out that under the Accountability NOPR, small and small disadvantaged businesses would often be unable to subcontract with M&O contractors because the added liabilities would flow down to subcontractors and the subcontractors would often be unable to obtain insurance or effectively self-insure due to their size.

DOE recognizes that small subcontractors would face limitations in obtaining insurance commercially and in self-insuring. Today's RPR offers an exemption for M&O subcontractors that are small and small disadvantaged contractors (as these terms are defined in the FAR § 19.001) to minimize the adverse impact of the rule on small and small disadvantaged businesses. These contractors, for instance, will be reimbursed for the cost of insurance or obtaining appropriate bonding.

Comments: Nine of the commenters argued that there will be fewer M&O subcontractors and that the contracts between M&Os and their subcontractors will cost more because liability under the NOPR will flow down to the subcontractors, while the enhanced award fees and the liability cap will not.

So long as the prime contractors award subcontracts, the increased fees to the subcontractors are costs to DOE. The increased fees will allow subcontractors to obtain insurance or to self-insure, and allow subcontractors to remain in the M&O arena and compete for enhanced fees and greater profitability. If higher costs are incurred in contracts between M&Os and their subcontractors, DOE is satisfied that the contractor accountability on all levels will result in overall cost savings.

Comments: Four commenters requested that special indemnification be allowed for Response Action Contractors (RACs) (which clean up toxic and hazardous waste) as it is often difficult, if not impossible, for them to obtain insurance.

Today's RPR does not attempt to propose solutions regarding the issue of possible indemnification of subcontractors performing clean-up activities at DOE sites. This is the case whether the subcontractors are operating as RAC's or clean-up subcontractors under the authority of the Atomic Energy Act of 1954, 42 U.S.C. 2201 (Atomic Energy Act). There is currently an internal DOE Environmental Clean-up Task Group ("Task Group") reviewing alternative contracting methods for DOE's clean-up activities. DOE will make its determination whether or not to include RAC's in the new rules for M&O contractors after the Task Group has completed its work.

7. Liability for Ordinary Negligence and Third Party Liability

In the RPR, DOE proposed that common law negligence be a criteria used by Contracting Officers in making their determination of allowability of Avoidable Costs, but that the standard of care to be imposed was that care which a reasonably prudent man would exercise in a technically complex high risk environment. In this Interim Final Rule, references to "common law" negligence are being dropped to avoid confusion between the standards created under this rule and the various standards created under case law.

Comments: Six commenters felt that the proposed standard of care was unworkable and that decisions would not be made uniformly. They also felt that the Contracting Officers were not trained to make these determinations.

Contracting Officers are trained to make business judgments and are continually called on to do so. Where appropriate, they also seek legal and technical advice to assist them in making their determinations. Contracting Officers are already called on under existing contracts to make determinations of gross negligence or willful misconduct, and with the assistance of legal counsel, will be able to make determinations of negligence as defined in this rule. Such determinations can not be made "uniformly" since each determination will be largely fact dependent and vary from incident to incident. However, the same standard of care will apply to all M&O contractors.

Further, the Interim Final Rule revises the definition of negligence to that of a "reasonable and prudent person under the same or similar circumstances in an identical or similar environment." This is a more commonly understood standard of care than the definition contained in the RPR which was that of a reasonably prudent person in a "technically complex, high risk environment."

Comments: Some commenters agreed that it was unfair to hold M&O contractors liable for the actions of third parties over which they had no control.

Under the Interim Final Rule, M&O contractors may be responsible for Avoidable Costs resulting from negligence of their personnel or the personnel of their subcontractors, over whom they are presumed to have at least indirect control. The relative responsibilities and limitations on the liability of subcontractors are discussed above. As to the liability for actions of other third parties (other than DOE) over whom the M&O contractor indeed has no control, the M&O contractor will not be held responsible unless negligence can also be shown on the part of the personnel of the M&O contractor or its subcontractors. If joint negligence with third parties is present, the allocation of financial responsibility should be determined by the parties involved.

For the convenience of the reader, earlier comments and DOE responses are repeated below:

Liability for Ordinary Negligence and Third Party Liability

The Accountability NOPR defined unallowable avoidable costs to include (i) Losses resulting from the ordinary negligence of the contractor or subcontractor when carrying out well-understood non-experimental work under a contract, including costs necessary to correct the error and accomplish the assigned task; and (ii) costs resulting from contractor or subcontractor negligence or misconduct giving rise to simple tort liability to third parties.

Comments: Fourteen commenters raised issues surrounding the lack of clarity for the negligence standard and the fact that negligence standards differ in different jurisdictions, and wanted to know what the mechanism for final determinations of negligence would be. The commenters indicated that disputes would be more likely under the proposed rule.

DOE recognizes that the Accountability NOPR was not entirely clear with respect to either the standard or the mechanism for determining negligence. Today's RPR defines the standard as "common law negligence" and places authority for the final determination with the Contracting Officer. The standard of care imposed will be that which a reasonably prudent man would exercise in a technically complex, high risk environment. Since the determination involves a claim against the Government, a final decision must be made by the Contracting Officer under the Contract Disputes Act. The standard is specified by contract, even though it is one conceptually borrowed from tort law.

Comments: Four commenters commented that in the commercial world, the price of goods and services includes the costs of rework and employee negligence.

In the commercial sector, costs of rework and negligence are reflected in the profit which the business obtains after the deduction of these overhead expenses. The price would only reflect such additional costs if the market or competition places no limits on the ability to impose price increases. The proposed rule involves cost reimbursement contracting. These potentially increased costs, should they be incurred, will be reflected in the enhanced award fees resulting from better contractor performance. Under either commercial arrangement or these new proposed rules, the ability of the business to control avoidable costs will result in greater profits.

Comments: Nine commenters argued that M&O contractors lack the control over employees, subcontractors, other prime contractors, and third parties necessary to avoid incurring costs due to employee negligence, rework, and third party liability.

With respect to new contractors taking over a site, DOE has recognized a problem of control for the contractor. Today's RPR, as indicated above, contains a provision to allow for a grace period for new contractors

before placing responsibility on the contractors for the employees already at the site. With respect to all other contractors, the problems of control at this level are no different than those faced in the private sector. The contractor is in the best position to avoid these kinds of costs, and this is precisely the kind of responsibility it is being paid to assume.

8. Level of Employee Responsibility

There were no new significant facts provided or arguments presented on the issue of level of employee responsibility. For the convenience of the reader, the earlier comments and DOE responses on this issue are repeated below:

Level of Employee Responsibility

The Accountability NOPR holds the contractor responsible for the actions or inactions of contractor and subcontractor personnel that result in unallowable avoidable costs.

Comments: Sixteen commenters pointed out that placing responsibility for negligent loss and theft of government property, ordinary negligence, and third party liability down to the lowest level employee represents a deviation from contracting principles in the FAR.

DOE recognizes that the FAR maintains a standard for liability in these cost categories for high level employees such as officers, directors, and plant managers. M&O contracting has from its inception been an area of government contracting filled with exceptions and special rules due to the unusual nature of its mission. The agency, in this RPR, is attempting to shift responsibility and risk to the contractors in order to encourage greater accountability and improved performance. The RPR makes the M&O environment more like that of the private sector in which an employer is responsible for the actions of his employees. The contractor is in the best position to ensure quality employee performance at intermediate and lower levels through adequate programs of hiring, training and supervision.

Comments: Seven commenters argued that contractors lack adequate control over employee hiring, management and work standards to allow for these companies to be able to practice risk management at the individual employee level.

In those instances where a new contractor has taken over a facility, DOE recognizes the difficulties a contractor faces in assessing the situation and taking appropriate action to avoid incurring unnecessary costs. Today's RPR provides a grace period for new contractors, within the discretion of the Contracting Officer, but not to exceed one year.

9. Direction From The Contracting Officer

There were no new significant facts provided or issues raised on the issue of direction from the Contracting Officer. For the convenience of the reader, the earlier comments and DOE responses on this issue are repeated below:

Under the Accountability NOPR, specific directions from the Contracting Officer will relieve the M&O contractor from having to absorb otherwise unallowable avoidable costs.

Comments: One commenter stated that in the M&O environment, directions from DOE do not usually come from the Contracting Officer and, in fact, specific written direction from the Contracting Officer is likely only in very rare cases.

DOE does not believe that this is a correct description of the day-to-day workings in an M&O environment. First, the DOE operations office manager is usually the Contracting Officer for M&O contracts. Second, the M&O contractor works under a very broad "statement of work." The M&O contractor carries out a substantial portion of its work without direct or specific DOE supervision. Third, if a situation arises where the M&O contractor receives directions from a DOE employee it will be in those important areas or at critical times where it is necessary for DOE to provide direction in order to ensure the performance desired by DOE. Those DOE employees giving such directions should be acting within the scope of their authority as delegated by the Contracting Officer (the manager of the operations office). The contractor in these instances, is aware, or ought to be aware, of whether the DOE employee is acting within his or her delegated authority. Most M&O contractors are experienced government contractors and should know the rules regarding the delegation and exercise of Contracting Officer authority.

10. Profit Making Subcontractors of Nonprofit M&O Contractors

There were no new significant facts provided or issues raised in regards to subcontractors of nonprofit M&O contractors. For the convenience of the reader the earlier comments and DOE responses are repeated below:

The Accountability NOPR does not specifically address the question of the extent of which profit making subcontractors of nonprofit prime contractors are subject to the unallowable avoidable cost provisions of that NOPR.

Comments: One commenter stated that the Accountability NOPR did not address profit making subcontractors working for nonprofit M&O contractors.

Profit making subcontractors of nonprofit M&O contractors are exempt from today's RPR to the same extent as the nonprofit prime contractors.

11. Special Exemptions From the RPR

Comments: In response to the Accountability NOPR the M&O contractors for (1) Sandia National Laboratories, (2) Bettis Atomic Power Laboratory (Bettis), and (3) Knolls Atomic Power Laboratory (KAPL), requested that they be treated as nonprofits and thus exempt from the applicability of the rule. DOE, in the RPR, asked for public comments on the requests for exemptions.

There were no significant objections (in fact only one commenter raised an objection to these specific designations), or new facts provided or issues raised in regard to these exemptions. DOE, therefore, has concluded that the M&O contractors currently at Sandia National Laboratories, Bettis, and KAPL are nonprofit entities for the purpose of being exempt from the application of this Interim Final Rule.

In addition, the following contractors at the specified sites are also determined to be nonprofit organizations under the Interim Final Rule:

Nonprofits Educational

Iowa State University
Ames Laboratory
Princeton University
Princeton Plasma Physics Laboratory
Stanford University
Stanford Linear Accelerator
University of Georgia Research Foundation
Savannah River Ecology Laboratory
University of California
Lawrence Berkeley Laboratory
University of California
Lawrence Livermore National Laboratory
University of California
Los Alamos National Scientific Laboratory
University of California
SF–Lab of Radiobiology and Environmental Health
University of Chicago
Argonne National Laboratory

Other Nonprofits

Associated Universities Inc.
Brookhaven Laboratory
Battelle Memorial Institute
Pacific Northwest Laboratory
Hanford Environmental Health Foundation
Hanford Occupational and Medical Environmental Health Services Organization
Lovelace Biomedical and Environmental Inhalation Toxicology Research Institute
Oak Ridge Associated Universities
Oak Ridge Operations Support
Southeastern Universities Research Association
Continuous Electron Beam Accelerator Facility
Universities Research Association, Inc.
Superconducting Super Collider
Universities Research Association, Inc.
Fermi National Accelerator

Comments: Several commenters indicated that DOE's definition of nonprofit was inappropriate in that it excluded corporations which received small fees to cover their overhead, but were not, in fact, established with a profit motive. Several of these commenters suggested that the definition of nonprofit provided at 35 U.S.C. 201(i) was more appropriate:

The term nonprofit organization means universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and

exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a) or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

While DOE does not agree that the definition contained at 35 U.S.C. 201(i) is appropriate as the controlling definition of nonprofit for this Interim Final Rule, the Interim Final Rule provides that when the Contracting Officer is considering for treatment as a nonprofit a contractor whose particular corporate organization and circumstances warrants such consideration, the Contracting Officer need not require that the absence of a fee be a prerequisite to designation as a nonprofit for purpose of the applicability of the Interim Final Rule. This is an exception to the definition of nonprofit contractor contained in the Interim Final Rule. The definition of 35 U.S.C. 201(i) is used as a qualification requirement prior to a determination being made by the Contracting Officer to grant an exception to the basic definition.

Comments: One commenter felt that specific contractors should not be listed as exempted or nonprofit in this rulemaking, and that these determinations should be made on an individual basis.

These determinations have not been included in the rule itself and will not become part of the DEAR. A discussion of the proposed status for certain contractors was contained in the preamble to the RPR because DOE specifically wanted to solicit comments with respect to these particular determinations. Because DOE thought it important for the public to be informed of its initial determinations as to which M&O contractors are nonprofits, they are listed above, but not in the body of the Interim Final Rule.

For the convenience of the reader, earlier comments and DOE's responses are repeated below:

Special Exemptions From the RPR

As indicated above, the Accountability NOPR provides that a nonprofit management and operating contractor is one which receives no fee and is considered nonprofit under the laws of the jurisdiction where it is incorporated, and if it is a subsidiary, it is a subsidiary of a company which is considered nonprofit under the laws of the jurisdiction where it is incorporated. A Contracting Officer may also treat as nonprofit a contractor which receives no fee and whose particular corporate organization or circumstances, in the judgment of the Contracting Officer, warrants such consideration. All other management and operating contractors are considered profit making.

Comments: Several M&O contractors have asked that they be exempt from the provisions of the Accountability NOPR because of special circumstances, including a historical exemption form procurement laws and regulations. Some contractors also argue that they are really nonprofits although they do not neatly fit within the definiton contained in the Accountability NOPR.

DOE is very reluctant to exempt M&O contractors from the provision of today's RPR except in the most unusual and compelling circumstances and where it is clearly in the best interest of the Government. First, DOE has concluded that the Sandia National Laboratories (SNL), operated by [Sandia Corporation, a wholly-owned subsidiary of AT&T], may be an appropriate candidate for such an exemption and the exemption is reflected in today's RPR. AT&T has indicated that its motivation for operating the SNL continues to be national service. AT&T operated SNL at no fee or profit. AT&T agreed to manage SNL in 1949 at the request of President Truman. For over forty years AT&T has made a significant contribution to DOE's mission at SNL.

DOE invites comments from the public as to whether AT&T at SNL should be treated as a nonprofit for the purpose of exemption from the Interim Final Rule.

Second, it was specifically requested that the Bettis Atomic Power Laboratory (Bettis) and the Knolls Atomic Power Laboratory (KAPL), both of which are part of the Naval Nuclear Propulsion (NNP) Program, be exempt from today's RPR. DOE has concluded that the contractors for Bettis and KAPL may be appropriate candidates for such an exemption and the exemption is reflected in today's RPR. These laboratories are operated by Westinghouse Electric Corporation (Westinghouse), and the General Electric Company (GE), respectively. GE and Westinghouse each have more than forty years involvement in the Naval Reactors Program. Additionally, both laboratories are single-purpose laboratories dedicated exclusively to the NNP Program, wholly dedicated as a support facility for that program.

DOE reviewed, among other things, Executive Order No. 12344 entitled "Naval Nuclear Propulsion Program." This Executive Order was signed by President Reagan on February 1, 1982 and was subsequently ratified by Congress in Public Law No. 98–525, 42 U.S.C. 7158 note. The Order provides, in part, as follows:

By the authority vested in me as President and as Commander in Chief of the Armed Forces of the United States of America, with recognition of the crucial importance to national security of the Naval Nuclear Propulsion Program, and for the purpose of preserving the basic structure, policies, and practices developed for this Program in the past and assuring that the Program will continue to function with excellence, it is hereby ordered as follows:

* * * * *

Sec. 5. Within the Department of Energy, the Secretary of Energy shall assign to the director the responsibility of performing the functions of the Division of Naval Reactors transferred to the Department of Energy by section 309(a) of the Department of Energy Organization Act (42 U.S.C. 7158), including assigned civilian power reactor programs, and any naval nuclear propulsion functions of the Department of Energy including:

(a) Direct supervision over the Bettis and Knolls Atomic Power Laboratories, the Expended Core Facility and naval reactor proto-type plants;

* * * * *

(e) Administration of the Naval Nuclear Propulsion Program, including oversight of program support in areas such as security, nuclear safeguards and transportation, public information, procurement, logistics, and fiscal management.

DOE invites comments from the public as to whether the M&O contractors for Bettis and KAPL, GE and Westinghouse, respectively, should be treated as nonprofit for the purpose of exemption from the final rule. (Brackets added.)

12. Fee Schedules and Converison Table

The fee schedules published in the RPR did not change from those originally published in the Award Fee NOPR. The conversion table did, however, change from a straight line conversion scale where each performance point was worth 5% of the available pool, to a conversion scale which provided increased fees for scores of 88 and above.

Comments: Many of the commenters stated that the proposed fee structure still will not compensate contractors for the additional risks. The commenters' perception is that DOE's grading system has become more stringent, and therefore, the higher scores are unattainable. The commenters also stated that the fee increases were "illusory" and that a large portion of the additional fee dollars would be the result of inflationary adjustments. Two commenters believed that the ten year review cycle for inflationary adjustments to the fee schedules was too long and recommended that the DOE commit to a more frequent review cycle.

Changes have been made to make available increased fees for contractors who perform at levels which are more than merely satisfactory. Two effects of these changes are that the evaluation process has been tightened-up to provide a more consistent approach at all DOE facilities. It is not the intent of the DOE to grade lower so that higher fees are unattainable. The increased fees are the result of both the inflationary adjustments to the schedules and the new award fee structure and, therefore, DOE believes that adequate compensation for associated risks has been provided. DOE is not persuaded that contractors' claims for additional increases can be justified.

In the RPR, DOE stated it will continue to review methods of

compensating for the effects of inflation. DOE has considered the public comments requesting a shorter review cycle for adjusting the fee schedules and has determined that the fee schedules will be adjusted for the impact of inflation at least every five years.

For the convenience of the reader, the earlier comments and DOE responses on the compensation for inflation issues are repeated below:

Compensation for Inflation

In the Award Fee NOPR DOE adjusted the fee schedules to reflect the impact of inflation from 1982 through 1989 using the GNP Price Deflator Index.

Comments: Three commenters expressed concern that the proposed rule did not fully compensate for inflation since 1982. Some commenters applied various indices to the existing fee schedules to indicate variances from DOE's proposal. Three commenters suggested that DOE should review the fee schedules on an annual basis or implement new schedules taking inflation into consideration each year.

For purposes of the RPR, DOE intends to retain the use of the GNP Price Deflator Index for the years 1982 through 1989. The GNP Price Deflator Index has been used for compensating for inflation in the fee schedules in the past. This Index expresses prices of various years as a percentage of price of a selected base year. At the time of the last adjustment of the fee schedules, the Index and formulae for adjustment were developed following an extensive study of DOE's fee policies. Essentially, the technique involves deflating each interval of estimated cost back to the base year (in this case, 1982) dollars. Next, a fee is calculated based upon existing fee schedules, which were developed on 1982. Finally, the fee amounts are adjusted to 1989 dollars by applying the Index. This has the effect of increasing the fee amounts by a greater percentage at the upper ends of the fee schedules. That is, the fees for higher estimated cost levels are increased by a larger percentage than fees for lower cost levels. This is appropriate because of the nature of DOE's declining fee curve policy, where the fees for larger value M&O contracts are a lower percentage of estimated cost than for lower value contracts.

The fee study issued in 1982 recommended that fee schedules be adjusted every ten years. DOE's current position is that any cost index will go through periodic fluctuations which will be "dampened" over a multi-year cycle.

However DOE will continue to review methods of compensating for the effects of inflation while the RPR is out for comment, and also will reconsider what review cycle is appropriate.

13. Double Penalty and Appealability of Award Fee

These topics were treated as a single subject in the comments to the RPR and comments were generally the same as those raised in response to the Accountability and Award Fee NOPRs. Commenters again argued that award fee determinations should be reviewable and appealable and that these determinations were appealable under the Contract Disputes Act.

Comment: Five commenters argued that award fee determinations are directly linked to Avoidable Cost determinations and both determinations should be appealable. An appeal of a Contracting Officer's negligence determination may not be resolved until after an award fee determination is made, and that award fee determination will take into account the Contracting Officer's earlier negligence determination.

There is enough flexibility already in the award fee process to account for this type of situation without the need to create a separate appeal process. Contracting Officers and fee determination officials have enough discretion to address this problem. As an example, even though a contractor may be found liable to a third party in a court case, DOE may make a separate decision in its award fee decision or allowable cost determination that the contractor has followed all applicable DOE guidelines.

For the convenience of the reader, the earlier comments and DOE responses regarding the double penalty issue are repeated below:

Double "Penalty"

The Accountability NOPR establishes contractor responsibility for certain unallowable avoidable costs. A contractor's performance will be reflected in the award fee and the "at risk" portions of the new Basic Fee.

As stated in the Accountability NOPR, DOE will seek to minimize the contractor's duplicative exposure to reduced award fees arising from the same facts or conditions which created the unallowable avoidable cost. When an M&O contractor timely advises DOE of incidents of weaknesses it has discovered, and voluntarily agrees that it will bear those costs, it is DOE's intention that such critical self-evaluation will be favorably considered with regard to performance for award fee purposes.

Comments: Two commenters are concerned that, in situations other than self-evaluation discussed above, the proposed Award Fee NOPR will "penalize" contractors twice, in disallowance of the unallowable avoidable costs, and in a lower fee determination.

Disallowance of cost items (e.g., fines, penalties, acts of negligence) on the one hand, and a fee determination on the other hand, are two independent concepts and events. It is unavoidable that poor performance which results in unallowable avoidable costs will impact the award fee determination. However, as already indicated above, critical self-evaluation will be considered favorably in the award fee determination process. The proposed fee structure reflects the greater risks and potential for unallowable avoidable cost.

There were no new significant facts provided or issues raised in regard to the appealability of the award fee. For the convenience of the reader, the earlier comments and DOE responses on this issue are repeated below:

Appealability of Award Fee

The Award Fee NOPR follows Federal Acquisition Regulation (FAR) 16.404–2, which provides that in cost-plus-award-fee contracts "[t]he amount of the award fee to be paid is determined by the Government's judgmental evaluation of the criteria stated in the contract. This determination is made unilaterally by the Government and is not subject to the Disputes clause."

Comments: Several commenters argued that award fee determinations should be appealable. Some of the commenters argued that such determinations should be appealable under the "Disputes" clause of the contract, while one commenter argued that the right provided under the Contract Disputes Act cannot be contracted away. The commenters' statements give the appearance that the non-appealability of the award fee determinations is unique to DOE. However, DOE has adopted the policy of the Federal Acquisition Regulation (FAR) in this regard. Once the cost-plus-award-fee contract type is chosen, it is government-wide policy that these award fee determinations are not appealable. DOE has no legal or policy basis for deviating from this policy.

It is DOE's position that the award fee portion of the total fee is not appealable. DOE believes that this approach is within the letter and the spirit of the FAR and applicable laws.

14. Performance Adjectives

Under the RPR, narrative descriptions of the performance adjectives were provided for performance levels of Outstanding, Good, Satisfactory, Marginal and Unsatisfactory. The descriptions and adjectives in the RPR were not changed from the Award Fee NOPR.

Comments: Two commenters expressed concern that the performance adjectives were not sufficiently defined and would be difficult to apply.

DOE does not believe that changes need to be made to the performance adjectives. The performance adjectives and narrative descriptions listed in the RPR are similar in form and content to the ones which DOE has been using in the past; they have only been standardized for DOE-wide use. The very nature of the award fee system results in a large amount of subjectivity during the determination process. Furthermore, performance evaluation criteria will most likely be both subjective and objective. For the

convenience of the reader, the earlier comments and DOE responses on performance adjectives are repeated below:

Performance Objectives

To implement the objective of greater financial incentives to compensate for greater risks for M&O contractors, the Award Fee NOPR contained proposed Performance Scores/Standards Adjectives/Fee Conversion Factors.

Comments: Many of the commenters argued that the increases in the available award fee were not obtainable because of the changes made in the scoring system. A number of these commenters stated that the amount of fees which could realistically be earned under the proposed system would not balance the greater degree of risk imposed by DOE under the Accountability NOPR. On the other hand, one commenter believed that DOE was in error in offering additional fees simply because M&O contractors would be held more accountable for their actions.

DOE has evaluated these comments and is today proposing a revision to the Performance Scores/Standard Adjectives/Fee Conversion Factors. This proposed new fee schedule is included as Attachment 1 to this section II. DOE believes that these proposed new fee conversion factors address the criticisms of the commenters, in that the conversion factors now increase the amount of award fee available for scores of 88 and above, thus providing further incentive to enhance contractors performance. For example, if the amount of award fee available was $10 million, under the Award Fee NOPR, a score of 90 would have resulted in an award fee of $5 million. Under today's RPR, a score of 90 will earn an award fee of $6 million. Similarly, a score of 95 under the Award Fee NOPR would have resulted in an award fee of $7.5 million. Under today's RPR, a score of 95 will result in an award fee of $9.4 million. DOE solicits comments regarding this revised fee schedule.

15. Classification of Facilities

The comments on Classification of Facilities in the RPR primarily responded to DOE's answers to earlier comments. However, the following additional comment was received.

Comment: One commenter believed that the Procurement Executive should not make unilateral designations and the categories should be published in the Federal Register for public comment.

The determination to assign each facility to a designated category involves myriad considerations and is not performed in a vacuum by one individual. These determinations will remain within the Department on a case-by-case basis and not subject to publication for public comment. Additionally, the process should be flexible enough to provide for timely redesignations when circumstances surrounding an assessment have changed, without the need for publication, comment and resolution of public comments.

For the convenience of the reader, the earlier comments and DOE responses on classification of facilities are repeated below:

Classification Categories

The Award Fee NOPR proposed the use of categories (Defense Facility-A, Defense Facility-B, Enrichment Plant, and Miscellaneous) for classification of each of the M&O facilities.

Comments: Eight of the commenters disagreed with the concept of categorizing facilities and assessing different amounts in award fee pools based upon the category. Some commenters believed that there was an inadequate number of categories or that certain categories were undervalued.

Other commenters expressed concern that the factors used to determine category assignment were inappropriate. A few commenters felt that the categories should be reviewed on a regular basis. Finally, several commenters believed that one or more of the facilities were placed into the wrong category.

DOE has considered these comments but has not been convinced that any major changes are necessary to the concept of categories and classification of facilities. Several facilities may be reassigned to a different category based upon the public comments. DOE's Procurement Executive will reassign individual facilities as appropriate on a case-by-case basis.

16. Retain Percentage of Award Fee as Financial Guarantee

The RPR required that contractors provide a financial guarantee to assure that sufficient resources are available to satisfy all costs and liabilities up to the amount of the actual award fee earned and the actual basic fee earned for a period based upon the highest amount of fee received over the last four evaluation periods. At the election of the contractor, the Contracting Officer may retain a percentage of the award fee as determined to be sufficient by the Contracting Officer to protect the interest of the Government.

Comments: Two commenters questioned the policy of withholding a percentage of award fee earned to protect the Government's interests. One of the commenters stated that more guidance to Contracting Officers was needed and the other commenter believed that the concept is inappropriate. One recommendation was made to limit the withhold feature to the final six months of a contract which is expiring.

The policy of retaining a percentage of the total fee, not just award fee, is "at the election of the contractor" and can be used in lieu of providing some other form of financial guarantee. Retainage of a percentage of the total fee is a change from the RPR which allowed the contractor to retain part of the award fee only. This concept is consistent with the change in the liability ceiling from "award fee available" to "award fee and basic fee earned" in a six-month evaluation period. DOE, moreover, has simply provided an alternative for consideration by the contractor. In any event, the Government must be protected, as it is in most Government contracts, and be able to administratively recover reimbursed costs to which the contractor is not entitled. The recommendation to limit the withholding feature to the final six months of an expiring contract is not adequate to protect the Government's interests during the life of an M&O contract which may involve a period of performance of many years.

17. Basic Fee Concept

Prior to the Accountability NOPR and the RPR, the base fee was a flexible amount which was established at a level up to 50% of the fixed fee. Under the RPR, the "basic fee" would be equivalent to the amount of the fixed fee under a CPFF arrangement, 50% of which would be "at risk" (refundable) if the contractor's performance falls below the "Satisfactory" level.

Comment: One commenter stated that the creation of the "basic fee" concept is unnecessary and that the basic fee is simply an extension of the award fee itself.

DOE does not agree with the commenter. The basic fee is an amount that is considered reasonable compensation for "acceptable" performance in managing and organizing contractor resources in general, whereas the award fee pool represents additional fee available to reward excellence in performance in specific areas designated by the Government for evaluation, such as environmental, health and safety issues.

III. Section-By-Section Analysis of the Interim Final Rule

Today's Interim Final Rule amends the DEAR. DEAR section 970.3102–21, Fines and Penalties, is revised to reflect that, for profit making M&O contractors, fines, penalties and related costs incurred in the performance of the contract are generally nonreimbursable when they result from contractor negligence or misconduct. Any claim for reimbursement of fines and penalties assessed against the contractor for which the contractor seeks reimbursement must be presented to the Contracting Officer under the terms of the contract. In determining whether

reimbursement is appropriate under the facts and circumstances presented, the Contracting Officer will take into consideration such factors as whether the losses resulted from acts directed or authorized by the Contracting Officer or resulting from the failure of DOE to provide necessary funds to avoid a noncompliant situation. A profit making contractor which is not otherwise exempt by law or regulation will not be reimbursed for fines or penalties imposed by DOE under the Price-Anderson Amendments.

All of the above nonreimbursable costs are unallowable costs under DEAR section 970.5204–13(e)(12) as well as section 970.5204–14(e)(10).

A new DEAR section 970.3102–22, Avoidable Costs, has been added to provide the Contracting Officer with the factors he or she must consider in determining whether a cost is an Avoidable Cost, and thus unallowable, or an allowable cost. As part of the decision making process, the Contracting Officer will consider the completeness, efficiency and effectiveness of the contractor's internal control system and procedures, whether proper training and instructions were provided to employees, whether overall reasonable precautions were taken and whether adequate corrective actions were taken to preclude future occurrences.

Also DEAR sections 970.5204–13(e)(17)(iv) and 970.5204–14(e)(15)(iv), losses, are revised to disallow any costs that could have been avoided by the contractor or its subcontractors, and were incurred solely and exclusively as the result of negligence or willful misconduct on the part of any contractor or subcontractor employee at any level or third parties other than DOE. This is intended to include situations where the contractor or subcontractor has not performed with the skill and expertise for which DOE has bargained under the contract. Third party claims for damages alleging negligence on the part of the contractor or subcontractor and litigation expenses are also unallowable under this section.

DEAR sections 970.5204–13(e)(36)(i) and 970.5204–14(e)(34)(i) are revised to make clear that the costs of bonds and insurance are unallowable when they are incurred to insure against losses resulting from Avoidable Costs that are otherwise unallowable under the contract. The purpose of the revision is to preclude the contractor from being indirectly reimbursed for unallowable costs thare are not directly reimbursable. An exception is made for insurance or bond costs which are authorized by specific written direction of the Contracting Officer. DEAR 950.7011(c) is also amended to reflect that policy.

DEAR sections 970.5204–13(e)(36)(ii) and 970.5204–14(e)(34)(ii) are added to exempt Small Businesses and Small Disadvantaged Businesses from today's Interim Final Rule in order to ensure participation of Small Business and Small Disadvantaged Businesses in the M&O contracting and subcontracting system.

DEAR section 970.5204–16 has been revised to provide that the new proposed paragraph (a) will be used instead of the current paragraph (a) when the award fee provisions are used. This new subsection provides that 50% of the new "Basic Fee" may be refunded to DOE for performance scores of 75 or below.

DEAR section 970.5204–18 provides a definition of nonprofit and profitmaking management and operating contractors. This is a new section intended to provide greater flexibility for the Contracting Officer when determining whether an M&O contractor should be treated as nonprofit.

The Interim Final Rule holds the contractor liable for loss or destruction of or damage to Government property resulting solely and exclusively from any negligent act or omission or willful misconduct, including theft, of any kind on the part of any contractor or subcontractor employee at any level. New DEAR section 970.5204–21(j) holds the contractor liable for any such losses resulting from failure to exercise reasonable care to avoid the loss or damage. However, scrap, waste and other routine costs which are reasonably anticipated are allowable costs under this clause.

The Interim Final Rule amends DEAR 970.5204–31 to indicate that if DOE does not approve litigation between the contractor and a third party, DOE will not be responsible for the costs of litigation, unless the Contracting Officer, following the specified guidelines, determines the cost to be reimbursable. The contractor would be eligible to make a claim for the costs of litigation and related costs, once a final judgment has been rendered, and subject to the limitations imposed by the nonreimbursement provisions of the Major Fraud Act and the Price-Anderson Amendments. DOE will continue to reimburse all costs involved with litigation which are approved, controlled or directed by DOE. DEAR 970.5024–13(e)(17)(iv) and 970.5204–14(e)(15)(iv) are amended to reflect these changes.

A revised DEAR section 970.5204–32, "Required bonds and insurance-exclusive Government property (costs-type contracts)," is included in the Interim Final Rule and would permit profitmaking contractors to insure against loss or destruction of or damage to Government property.

New DEAR section 970.5204–55 provides a limitation on the exposure of the contractor for non-criminal fines, penalties, and the related costs of litigation which are no longer allowable costs under the Interim Final Rule. This ceiling on liability is equal to the sum of the actual award fee earned and the actual basic fee earned for the six-month evaluation period when the event(s) which caused the Avoidable Costs occurred but does not apply to any costs or liabilities incurred under other provisions of the contract. (In cost-plus-fixed-fee contracts, the liability ceiling is equal to the amount of 6 months of fixed fee for the period during which such costs are attributed or otherwise incurred.)

A new subsection 970.5204–55(b) has been added to limit the liability of subcontractors to the amount of fee earned during a particular M&O contractor's six-month evaluation period. If the Avoidable Costs exceed the subcontractor's profit DOE will reimburse for such cost, unless the M&O contractor caused, in whole or in part, the incurrence of the Avoidable Costs. In such case the M&O contractor will be responsible for the payment of the Avoidable Costs to the extent of its ceiling.

Since fees awarded during subsequent periods may be insufficient to assure DOE recovery for costs which are the contractor's responsibility, the Contracting Officer has the option of withholding a percentage of the award fee earned at the end of each evaluation period to protect DOE from a potential default on the part of the contractor for its Avoidable Costs obligation. Alternatively, the contractor may satisfy its financial responsibility obligation by obtaining letters of credit, corporate guarantees, bonds, or make other similar financial arrangements. Liability for fines, penalties, unallowable Avoidable Costs and loss to Government property incurred over multiple evaluation periods would be allocated to the evaluation period in which the incident or event giving rise to the cost occurred. If it is not reasonably possible to allocate these activities to a specific evaluation period, or if the incidents or events giving rise to the Avoidable Costs occurred over multiple evaluation periods, the contractor's financial risk is limited to the sum of the actual award fee earned and the actual basic fee

earned in the evaluation period when the amount of nonreimbursable costs or losses were determined. If such determination is made following the expiration of a contract, or the contractor is otherwise replaced, the sum of the actual award fee earned and the actual basic fee earned for the last six-month period that the contract was in effect shall be utilized, after deducting such disallowed costs as were previously charged to that period.

Today's Interim Final Rule adds new DEAR section 970.5204–56, Deteriming Avoidable Costs, which provides for a phase-in period for a new contractor inheriting employees as holdovers from the previous contractor. The new contractor would not be responsible for Avoidable Costs resulting from negligence of the holdover employees for a period to be negotiated with the Contracting Officer prior to entering into a contract. This phase-in period, however, may not exceed one year. The purpose of the phase-in period is to provide adequate time for employee evaluation, orientation and training. The contractor will have a reasonable period of time, which may be more or less than one year, to discern other problems and report them to the Contracting Officer. This section also defines what Avoidable Costs are.

In addition, DEAR section 970.5204–56 provides that the Contracting Officer, in determining whether a cost is an "Avoidable Cost," must, among other factors, consider three specified factors. This is designed to provide the Contracting Officer flexibility when unusual and unforeseen circumstances result in the incurrence of an Avoidable Cost that would otherwise be nonreimbursable.

It is contemplated that DOE and its M&O contractors will make every effort to resolve as soon as possible on an informal basis any disagreements which arise concerning particular costs which may be unallowable under these regulations. DOE recognizes that it will be in the best interest of cooperative contract administration and performance to encourage mutually satisfactory agreements with its contractors regarding cost allowability in a timely and informal manner.

The Construction Contracts Schedule, Construction Management Contract Schedule, and Special Equipment Purchases/Subcontract Work Schedule are revised to reflect fee amounts, related fee percentages and incremental percentages which have been increased to accommodate the economic inflation since these schedules were last updated. DEAR 915.971–5 (d), (f) and (h).

Language is added to DEAR 915.972(a) making it clear that all M&O contracts awarded on an award fee basis will use the techniques set forth in 970.1509–8 to convert from a CPFF to an award fee negotiation objective.

DEAR 950.7011(c) was amended to reflect the policy that insurance for non-nuclear risks is limited to losses in excess of the liability cap of DEAR 970.5204–55. This clause was also revised to reflect the policy that insurance premiums for otherwise unallowable costs may not be reimbursed.

The Production Efforts Schedule and Research and Development Efforts Schedule amend DEAR 970.1509–5(b) to incorporate fee amounts, related fee percentages and incremental percentages which have been increased to accommodate economic inflation since these schedules were last updated.

DEAR 970.1509–8 is amended to provide the details of the technique which will be used to convert a CPFF negotiation objective to an award fee negotiation objective. In essence, the table under subparagraph (d) is deleted in favor of a new approach which provides mandatory basic fees plus award fees which vary in size based upon the type of facility being managed and operated. Under this approach, contractors responsible for activities with greater risk, particularly the kinds of risks detailed in the Accountability NOPR, will be eligible for higher award fees.

In addition, this section includes a new listing of adjectival ratings which will be used in performance evaluations under M&O award fee contracts. Each adjective is defined in narrative fashion, in terms of performance scores, and in terms of the percentage of available award fee earned. This list of standard, mandatory adjectives will ensure that contractors rated at the same level of performance will receive identical adjectival ratings. Furthermore, a mandatory fee conversion table is incorporated, which will ensure that a specific performance rating will result in the award of a particular percentage of the available award fee for the evaluation period involved. These revisions are intended to provide a more uniform approach to award fee contracting throughout the DOE.

IV. Procedural Requirements

A. Review Under Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared prior to promulgation of a "major rule," and subject to certain exceptions, provides for submission of rules to the Office of Management and Budget (OMB) for formal regulatory review. The term "major rule" is defined by Executive Order 12291 to include "any regulation that is 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, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets."

1. Type of Rule

In the preamble to the RPR, DOE concluded that this rulemaking does not involve a "major rule," and further that the rule does not have to be submitted to OMB for formal regulatory review because it is part of a class of procurement regulations which are exempt from such review. DOE received comments criticizing its determinations under Executive Order 12291 and its decision not to submit the RPR to OMB for formal regulatory review. Some of the comments also sought to make a case for voluntary submission to OMB.

The comments regarding whether the rule is a "major rule" argued largely that the rule will result in an annual effect on the economy of $100 million or more, or result in a major increase in costs or prices for contractors and DOE. In support of these arguments, the comments cited the multi-billion dollar size of the FY 1991 budget requests including M&O contractor activities, the potential for significant fines and penalties, exposure to third party liability, cost increases due to decreased competition for M&O contract and subcontract awards, cost increases due to increased recordkeeping to identify and track property and justify allowability of costs, and reduced expenditures for research and development.

Determining whether a rule is a "major rule" within the meaning of Executive Order 12291 requires an assessment of the incremental and likely economic impact of the rule. The rule is not likely to affect all of the appropriations Congress makes available for M&O contractor activities. However, all of the M&O contractors and DOE are certain to be affected economically by the inflation adjustment. That adjustment, estimated to be $25 million dollars, based on available fees for FY 1988, is likely to have a significant cash flow effect on

the economy and the costs of M&O contractors and DOE only in the first year because it is a multi-year adjustment from 1981 to 1989. It will add money to the economy, offset increased M&O contractor costs, and add to DOE costs.

The financial exposure of M&O contractors resulting from the rule, as distinguished from the independent effect of any other provision of law such as the Major Fraud Act, is largely the exposure to loss of the award and basic fees. It is likely that some M&O contractors will suffer some loss of these fees during any year; it is possible, but *not* likely, that all such fees will be lost. To the extent that there is some loss of fees, DOE will experience lower costs.

It is true that M&O contractors will have to modify existing acounting and recordkeeping systems, but given the lack of specifics from commenters, who are in the best position to provide details, DOE is not persuaded by the conclusory assertions in some of the comments to the effect that wholly new and extremely expensive accounting systems will be necessary. Moreover, the effect of increased costs of compliance on the economy will be offset by a factor largely ignored by critics of DOE's determinations under Executive Order 12291, namely, improved avoidance of costs which are unallowable and non-reimbursable as a result of the rule. In the absence of specifics from the commenters on increased accounting costs, and given the predictable incentive effect of the rule toward improved cost avoidance, DOE believes it likely that the latter will exceed or largely offset the former.

Finally, it is possible that some potential contractors will refrain from competing for M&O contractor and subcontractor awards, but given the changes DOE has written into the rule to enable contractors to gauge their real financial exposure and to limit the effect of the rule on most subcontractors, it is not likely that there will be a significant increase in DOE costs due to lack of competition for contract or subcontract awards or a significant reduction in amounts available to carry out research and development based solely on this Interim Final Rule.

On the basis of the foregoing, DOE finds that the maximum annual effect on the economy will occur in the first year and that the net cost effects on the M&O contractors and DOE do not constitute major increases in cost. With respect to provisions of the rule which will impose liabilities over and above liabilities independently provided for under any other provision of law such as the Major Fraud Act amendments, DOE estimates that the effect on the economy during the first year will not be substantial. DOE therefore reaffirms its conclusion that today's rule is not a "major rule."

2. OMB Review

In the preamble to the RPR, DOE concluded that the rule was part of a class of procurement rules which are exempt from formal regulatory review by OMB under Executive Order 12291. Critics of that conclusion argued that the rule is not covered by the exemption or that the exemption has expired. Some commenters asked DOE to submit the rule to OMB voluntarily. Although adhering to its prior conclusions, DOE has acceded to the request of some commenters that the rule be submitted voluntarily to OMB. DOE did so informally, and OMB has concluded its review.

B. Review Under the Regulatory Flexibility Act

In the preamble to the RPR, DOE certified under the Regulatory Flexibility Act (Pub. L. 96–354) that the rule will not have a significant economic impact on a substantial number of small entities and said that no regulatory flexibility analysis would be prepared. Some of the comments criticized DOE's determinations under the Regulatory Flexibility Act without much, if any thing, in the way of specifics. In crafting today's rule, DOE has taken into account comments arguing that the RPR would adversely affect small businesses. The RPR, as revised and issued today as an Interim Final Rule, will have even less effect on small businesses than the RPR published for public comment on August 10, 1990. In fact, Small Businesses and Small Disadvantaged Businesses are totally exempt from today's Interim Final Rule, including the Avoidable Costs and insurance provisions.

C. Review Under the Paperwork Reduction Act

In the preamble to the RPR, DOE concluded that there was no need for OMB clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*). Some of the comments criticized this conclusion on the ground that there would be substantial new recordkeeping burdens as a result of the rule. The comments argued that these alleged burdens should lead DOE to conclude that OMB clearance must or should be sought under that Act.

DOE is not persuaded that there will be substantial new recordkeeping burdens because the comments suggesting that there would be such burdens are purely conclusory. More importantly, today's rule does not contain new "information collection" requirements, and the criteria for paperwork reduction reviews are specifically targeted at reporting requirements which constitute "information collections." It is therefore neither necessary as a matter of law nor appropriate as a matter of policy to submit the rule to OMB for paperwork reduction clearance.

D. Review Under the National Environmental Policy Act

It has been and continues to be DOE's policy that contractors comply with all applicable environmental requirements. DOE anticipates that the DEAR amendments adopted in this Interim Final Rule will act to encourage diligence in fulfilling this commitment. However, it is not possible at this time to speculate concerning specific actions, if any, which may be taken in response to the rule, or whether they would have significant environmental effects. Therefore, no meaningful NEPA analysis can be prepared in conjunction with promulgation of this rule. DOE will continue to examine individual actions to determine the appropriate level of NEPA review.

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41285 (October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's Interim Final Rule will revise certain policy and procedural requirements. However, DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of States.

V. Additional Opportunity for Public Comment

As the "Background" description indicates, there have been three opportunities for written public comment and one opportunity for a public hearing on the issues in this rulemaking. The record is fully developed and sufficient to support issuance of a final rule.

Nevertheless, DOE has issued today's rule as an interim final rule in order to provide a limited opportunity (60 days) for additional public comment on changes which have been made since publication of the RPR. DOE is providing this opportunity for public reaction on the entire rule, particularly the balance which has been struck in the rule between risk and reward. After evaluating any comments which are received on that issue, DOE will decide whether a response is warranted.

Members of the public are requested not to use this opportunity to restate arguments or raise issues they have already presented, or could have presented, in prior comments. DOE will not respond to such comments. DOE may respond to comments which offer significant, new and previously unavailable information, or which raise significant new arguments or issues in light of changes DOE has made to the proposed rule since the RPR.

No further regulatory action is essential to the legal effectiveness of the Rule, which will become effective March 11, 1991. Absent further action by DOE, this interim rule will become final May 8, 1991.

List of Subjects in 48 CFR Parts 915, 950 and 970

Government contracts, DOE management and operating contracts.

Issued in Washington, DC on January 24, 1991.

Silas B. Fisher,

Director, Office of Procurement, Assistance and Program Management.

PART 915—CONTRACTING BY NEGOTIATION

1. The authority citation for part 915 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. Section 915.971–5 is amended by revising paragraphs (d), (f), and (h) to read as follows:

915.971–5. Fee schedules.

* * * * *

(d) The following schedule sets forth the base for construction contracts:

CONSTRUCTION CONTRACTS SCHEDULE

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr (percent)
100,000	5,400	5.40	5.30
300,000	16,000	5.33	5.00
500,000	26,000	5.20	4.80
1,000,000	50,000	5.00	3.55
3,000,000	121,000	4.03	3.00
5,000,000	181,000	3.62	2.62
10,000,000	312,000	3.12	2.38
15,000,000	431,000	2.87	2.01
25,000,000	632,000	2.53	1.79
40,000,000	900,000	2.25	1.58
60,000,000	1,216,000	2.03	1.43
80,000,000	1,502,000	1.88	1.29
100,000,000	1,759,000	1.76	1.15
150,000,000	2,333,000	1.56	0.99
200,000,000	2,829,000	1.41	0.73
300,000,000	3,563,000	1.19	0.63
400,000,000	4,188,000	1.05	0.52
500,000,000	4,706,000	0.94	
Over $500 million	4,706,000		*0.52

*0.52 percent excess over $500 million.

CONSTRUCTION CONTRACTS SCHEDULE—Continued

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr (percent)
25,000,000	632,000	2.53	1.79
40,000,000	900,000	2.25	1.58
60,000,000	1,216,000	2.03	1.43
80,000,000	1,502,000	1.88	1.29
100,000,000	1,759,000	1.76	1.15
150,000,000	2,333,000	1.56	0.99
200,000,000	2,829,000	1.41	0.73
300,000,000	3,563,000	1.19	0.63
400,000,000	4,188,000	1.05	0.52
500,000,000	4,706,000	0.94	
Over $500 million	4,706,000		*0.52

*0.52 percent excess over $500 million.

* * * * *

(f) The following schedule sets forth the base for construction management contracts:

CONSTRUCTION MANAGEMENT CONTRACTS SCHEDULE

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr (percent)
100,000	5,400	5.40	5.30
300,000	16,000	5.33	5.00
500,000	26,000	5.20	4.80
1,000,000	50,000	5.00	3.55
3,000,000	121,000	4.03	3.00
5,000,000	181,000	3.62	2.62
10,000,000	312,000	3.12	2.38
15,000,000	431,000	2.87	2.01
25,000,000	632,000	2.53	1.79
40,000,000	900,000	2.25	1.58
60,000,000	1,216,000	2.03	1.43
80,000,000	1,502,000	1.68	1.29
100,000,000	1,759,000	1.76	
Over $100 million	1,759,000		*1.29

*1.29 percent excee over $100 million.

* * * * *

(h) The schedule of fees for consideration of special equipment purchases and for consideration of the subcontract program under a construction management contract is as follows:

SPECIAL EQUIPMENT PURCHASES/SUBCONTRACT WORK SCHEDULE

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr (percent)
100,000	1,500	1.50	1.50
200,000	3,000	1.50	1.50
400,000	6,000	1.50	1.50
600,000	9,000	1.50	1.50
800,000	12,000	1.50	1.50
1,000,000	15,000	1.50	1.00
2,000,000	25,000	1.25	0.85
4,000,000	42,000	1.05	0.70
6,000,000	56,000	0.93	0.65
8,000,000	69,000	0.86	0.60
10,000,000	81,000	0.81	0.56
15,000,000	109,000	0.73	0.48
25,000,000	157,000	0.63	0.43
40,000,000	222,000	0.56	0.40
60,000,000	301,000	0.50	0.36
80,000,000	372,000	0.47	0.34
100,000,000	439,000	0.44	0.25
150,000,000	566,000	0.38	0.21
200,000,000	670,000	0.34	0.12
300,000,000	793,000	0.26	
Over $300 million	793,000		*0.12

SPECIAL EQUIPMENT PURCHASES/SUBCONTRACT WORK SCHEDULE—Continued

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr (percent)
60,000,000	301,000	0.50	0.36
80,000,000	372,000	0.47	0.34
100,000,000	439,000	0.44	0.25
150,000,000	566,000	0.38	0.21
200,000,000	670,000	0.34	0.12
300,000,000	793,000	0.26	
Over $300 million	793,000		*0.12

*0.12 percent excess over $300 million.

3. The introductory text to section 915.972(a) is revised to read as follows:

915.972 Special consideration for cost-plus-award-fee contracts.

(a) When a contract is to be awarded on a cost-plus-award-fee basis in accordance with section 916.404–2, several special considerations are appropriate. Fee objectives for management and operating contracts, even those using the Construction or Construction Management fee schedules from section 915.971–5, shall be developed pursuant to the procedures set forth in section 970.1509–8. Fee objectives for other cost-plus-award-fee contracts shall be developed as follows:

* * * * *

PART 950—EXTRAORDINARY CONTRACTUAL ACTIONS

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

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

5. In section 950.7011 paragraph (c) is revised to read as follows:

950.7011 General contract authority indemnity.

* * * * *

(c)(1) While it is normally DOE policy to require its non-M&O contractors to obtain insurance coverage against public liability for nonnuclear risks, there may be circumstances in which a contractual indemnity may be warranted to protect a DOE non-M&O contractor against liability for uninsured nonnuclear risks.

(2) It is DOE policy that, except to the extent required by the direction of the Contracting Officer and in the case of Small Businesses and Small Disadvantaged Businesses, M&O contractors shall not obtain reimbursement for bonds or insurance to cover otherwise unallowable Avoidable Costs. M&O contractors may only be reimbursed for insurance against nonnuclear risk above the liability

ceiling provided in section 970.5204–55, subject to the approval of the Contracting Officer.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

6. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201); sec. 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and sec. 1534 of the Department of Defense Authorization Act, 1986, Public Law 99–145 (42 U.S.C. 7256a), as amended.

7. Section 970–1509–5 paragraph (b) is revised to read as follows:

970.1509–5. Limitations.

* * * * *

(b) The applicable schedules and maximum fees are:

PRODUCTION EFFORTS

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr (percent)
Up to $1 mil			7.00
1,000,000	70,000	7.00	6.20
3,000,000	194,000	6.47	5.55
5,000,000	305,000	6.10	4.48
10,000,000	529,000	5.29	3.88
15,000,000	723,000	4.82	3.39
25,000,000	1,062,000	4.25	3.06
40,000,000	1,521,000	3.80	2.67
60,000,000	2,054,000	3.42	2.35
80,000,000	2,524,000	3.16	2.14
100,000,000	2,952,000	2.95	1.32
150,000,000	3,613,000	2.41	1.02
200,000,000	4,123,000	2.06	0.56
300,000,000	4,678,000	1.56	0.48
400,000,000	5,162,000	1.29	0.41
500,000,000	5,574,000	1.11	
Over 500 million	5,574,000		*0.41

*0.41 percent excess over $500 million.

RESEARCH AND DEVELOPMENT EFFORTS

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr (percent)
25,000	2,500	10.00	10.00
50,000	5,000	10.00	10.00
100,000	10,000	10.00	8.00
200,000	18,000	9.00	8.00
400,000	34,000	8.50	7.50
600,000	49,000	8.17	7.00
800,000	63,000	7.88	7.00
1,000,000	77,000	7.70	6.40
3,000,000	205,000	6.83	6.25
5,000,000	330,000	6.60	5.68
10,000,000	614,000	6.14	5.22
15,000,000	875,000	5.83	4.43
25,000,000	1,318,000	5.27	3.86
40,000,000	1,897,000	4.74	3.38
60,000,000	2,572,000	4.29	2.99
80,000,000	3,170,000	3.96	2.46
100,000,000	3,662,000	3.66	1.54
150,000,000	4,434,000	2.96	1.04
200,000,000	4,955,000	2.48	0.61
300,000,000	5,561,000	1.85	0.53

RESEARCH AND DEVELOPMENT EFFORTS—Continued

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr (percent)
400,000,000	6,095,000	1.52	0.46
500,000,000	6,556,000	1.31	
Over 500 million	6,556,000		*0.46

*0.46 percent excess over $500 million.

* * * * *

8. In section 970.1509–8 paragraphs (b), (c), and (d) are revised to read as follows:

970.1509–8 Special considerations—award fee.

* * * * *

(b) In management and operating contracts, the basic fee portion of the fee negotiation objective shall be established equal to the otherwise applicable fixed fee established in accordance with 970.1509–4. This basic fee includes a 50% base fee and a 50% "at risk fee." No variations from this objective are authorized without the prior approval of the Procurement Executive. The basic fee shall be paid in equal monthly installments, in accordance with the clause at 970.5204–16, Payments and Advances. However, in the event the contractor's performance is judged by the Fee Determination Official to fall into the performance categories of Marginal or Unsatisfactory, as those terms are defined in subparagraph (d) of this section, the contractor shall be required to refund to the Government up to 50% of the basic fee paid for that evaluation period at a rate of 5% for each performance point below 76, as shown in the table in subparagraph (d) of this section.

(c) The award fee portion of the fee objective for a management and operating contract shall be established for each contract using the following formula:

Basic Fee Amount X (multiplied by the) Applicable Award Fee Factor. The applicable award fee factor shall be established according to the following category placements as set forth below:
Defense Facility—A
Defense Facility—B
Enrichment Plant
Miscellaneous

Individual DOE facilities which are operated under award fee arrangements will be assiged to each category by the Procurement Executive, whose designee shall distribute a list of such assignments to all Heads of Contracting Activities (HCAs). In assigning facilities to categories, the Procurement Executive will consider the factors listed below, to determine the risks—technical, management, and financial—which the contractor will assume in fulfilling the contract requirements. Contracts which involve higher levels of risks shall be placed in higher categories and be eligible for higher award fees. The Procurement Executive, or designee, shall review the category assignments on a regular basis or upon request by the HCA for a particular contract. Reassignments may be made based upon a change in contract requirements or changes in any of the following factors:

(1) Placement of the facility on the EPA's National Priority List (NPL). Facilities which are listed on the NPL shall be considered to involve higher risks.

(2) Nature of the contractor's work at the facility. Contracts involving the management of facilities listed on the NPL or requiring the environmental restoration of NPL sites, shall be considered to involve higher risks, whereas contracts involving unrelated work may be considered of lesser risk, regardless of NPL designations.

(3) Size of the facility in relationship to the areas of risk. Management of a large facility with a minor site designated on the NPL would be considered a lesser risk than management of a small facility which includes several major sites listed on the NPL.

(4) Quantity, complexity and type of Government property for which the contractor is responsible. Contracts requiring control over large quantities of sensitive Government property shall be considered of higher risk than those involving relatively small quantities.

(5) Exposure to third-party liability. Contract activities which expose the contractor to the risk of third-party liability will be considered, and such risk assessed accordingly.

(6) The extent to which the work at the facility presents health and safety risks to the workers at the facility and the public.

In considering the above factors, any risks which are indemnified by the Government (for example, by the Price-Anderson Act) will not be considered as risk to the contractor. Where a single contract involves multiple facilities falling into different categories, the basic fee amount shall be divided into amounts applicable to the operation of each facility before applying the award fee pool factor. The following potential award fees shall apply in each category (percent is stated as a percentage of the

otherwise applicable maximum fixed fee amount):

Category	Basic fee (percent)	Potential award fee (percent)	Potential maximum total (percent)
Defense Facility—A	100	200	300
Defense Facility—B	100	150	250
Enrichment Plant	100	150	250
Miscellaneous	100	100	200

(d) All management and operating contracts awarded on an award fee basis shall incorporate the following performance grading and fee conversion system into the contract, by including the system in the Performance Evaluation Plan required by the contract clause at 970.5204–54. The performance grading and fee conversion system consists of a set of adjectival grades defined in a narrative form, in terms of performance points, and the percentage of available award fee earned as follows:

Fee Conversion Table

The contractor's performance shall be evaluated by the Fee Determination Official at the end of each evaluation period, and graded in accordance with the scale below:

Performance score	Percent of award fee earned
OUTSTANDING	
Any score in the Outstanding category will earn 100% of the available award fee.	
96 and above	100.0
95 Good	94.0
94 Good	88.0
93 Good	82.0
92 Good	75.0
91 Good	68.0
90 Good	60.0
89 Good	51.0
88 Good	43.0
87 Good	36.0
86 Good	30.0
85 Satisfactory	25.0
84 Satisfactory	20.0
83 Satisfactory	15.0
82 Satisfactory	10.0
81 Satisfactory	5.0
80 Satisfactory	0.0
79 Satisfactory	0.0
78 Satisfactory	0.0
77 Satisfactory	0.0
76 Satisfactory	0.0
75 Marginal	5.0
74 Marginal	10.0
73 Marginal	15.0
72 Marginal	20.0
71 Marginal	25.0
70 Marginal	30.0
69 Marginal	35.0
68 Marginal	40.0
67 Marginal	45.0
66 Marginal	50.0
Below 65 Unsatisfactory	50.0

Performance scores should be rounded to the nearest tenth of a point and the percent of award fee determined accordingly (e.g., a score of 88.4 equals 42.0% of award fee earned).

Narrative Description of Performance Adjectives

Adjective	Definition (performance Description)
Outstanding	Performance substantially exceeds expected levels of performance. Several significant or notable achievements exist. No notable deficiencies in performance.
Good	Performance exceeds expected levels and some notable achievements exist. Although some notable deficiencies may exist, no significant deficiencies exist.
Satisfactory	Performance meets expected levels. Minimum standards are exceeded and "good practices" are evident in contract operations. Notable achievements or notable deficiencies may or may not exist.
Marginal	Performance is less than expected. No notable achievements exist; however, some notable deficiencies exist, or any notable achievements which exist are more than offset by significant or notable deficiencies.
Unsatisfactory.	Performance is below minimum acceptable levels. Significant deficiencies causing severe impacts on mission capabilities exist. Performance at this level in *any* area mentioned in the Performance Evaluation Plan may result in a decision by the Fee Determination Official to withhold all award fee for the period.

Definitions

Significant: This term indicates a major event or sustained level of performance which, due to its importance, has a substantial positive or negative impact on the contractor's ability to carry out its mission.

Notable: This term indicates an event or sustained level of performance which is of lesser importance than a "significant" event, but nonetheless deserves positive or negative recognition.

9. Section 970.3102–21 is revised as follows:

970.3102–21 Fines and penalties.

(a) It is DOE policy to reimburse nonprofit management and operating contractors for fines and penalties that are incurred in the performance of their contracts. Any such reimbursement for fines and penalties incurred under the contract will be made as long as such fines and penalties are not the result of the willful misconduct or lack of good faith on the part of the contractor's officers, directors or supervising representatives.

(b)(1) It is DOE policy not to reimburse profit making management and operating contractors for fines and penalties that are incurred in the performance of their contracts where such fines or penalties are incurred as a result of contractor negligence or willful misconduct where the breach of the contractor's legal duty giving rise to such a fine or penalty involves an area of responsibility clearly placed on the contractor.

(2) For purposes of this section the phrase "fines and penalties" means a sum of money the payment of which Federal or state law or regulation exacts as punishment for or deterrence against doing some act which is prohibited, or not doing some act which is required by law or regulation. The assessment is imposed by statute or regulation as a consequence of the commission of an offense or act of omission, and the payment is intended as a punishment or deterrent. The fine or penalty may be imposed in a civil enforcement action or result from a criminal conviction. A fine or penalty shall not be construed as an assessment which is imposed as damages on the basis of civil litigation or which is imposed on the basis of strict liability, that is, without regard to the fault or negligence of the party involved.

(3) In assessing any claim for payment by the contractor for a fine or penalty as

an allowable cost under the contract the Contracting Officer shall, among other factors, consider the following:

(i) Whether the act which resulted in the fine or penalty was a result of negligence, wrongdoing, or strict liability on the part of personnel of the contractor or a subcontractor, at any tier.

(ii) Whether the contractor was newly selected to manage the facility and whether it had sufficient time to discern the problem and report it prior to the imposition of the fine or penalty.

(iii) Whether the assessment of the fine or penalty was due solely to negligence or wrongdoing of personnel of the contractors or its subcontractors or whether DOE contributed to any such action or inaction.

These are only some of the factors, along with the factors specified in section 970.3102–22, to be considered and do not represent all factors which may be pertinent in each case. Criminal fines and penalties which represent the judicial determination beyond a reasonable doubt that the contractor acted wrongfully are generally not considered to be an allowable cost and will not be considered by the Contracting Officer for reimbursement except under extraordinary circumstances. Any final decision to reimburse a criminal fine or penalty shall be made by the Procurement Executive and shall only be made with the concurrence of the General Counsel.

(c) It is DOE's policy not to reimburse any profit making contractor for civil or criminal penalties assessed under the Price-Anderson Amendments Act of 1988, Public Law 100–408, 42 U.S.C. 2273, 2282, and for the costs of litigation relating to such assessments, except as may be specifically provided in regulations implementing those civil and criminal penalties provisions.

(d) For purposes of this section, a nonprofit contractor or subcontractor is one which receives no fee and is considered nonprofit under the laws of the jurisdiction where it is incorporated. A subsidiary may be considered a nonprofit contractor or subcontractor if all entities above it in the corporate structure are considered nonprofit under the laws of the incorporating jurisdiction. A Contracting Officer may also treat as nonprofit a contractor whose particular corporate organization or circumstances, in the judgment of the Contracting Officer, warrants such consideration, provided such contractor is a nonprofit organization as defined at 35 U.S.C. 201(i). All other management and operating contractors are considered profit making.

10. Section 970.3102–22 is added to read as follows:

970.3102–22 Avoidable costs.

In determining whether a cost is an "Avoidable Cost" as specified in sections 970.5204–13(e)(12) and (e)(17)(iv), 970.5204–14(e)(10) and (e)(15)(iv), 970.5204–21(j) and 970.5204–31, the Contracting Officer, shall, among other factors, consider:

(a) Whether the contractor's conduct resulted from compliance with written direction from the Contracting Officer.

(b) Whether the contractor's conduct occurred after specific instances of noncompliance were reported by the contractor to the Contracting Officer and necessary funding or authorization to correct the conditions were unavailable.

(c) Whether the act or failure to act resulted from a violation of a formal DOE regulation or order. The Contracting Officer will also assess the completeness, efficiency and effectiveness of the contractor's internal control systems and procedures (e.g., operational, maintenance, security), as well as determine whether, in the case of damage to or loss of Government property, the contractor has faithfully implemented the DOE-approved property management system, whether proper training and instruction were provided to employees, whether all reasonable precautions were taken, whether problems were promptly identified and reported to the DOE and whether adequate corrective actions were taken to preclude future occurrences.

(d) Whether the contractor voluntarily informed the Contracting Officer in a timely good faith manner of the condition or activity whether later resulted in the incurrence of Avoidable Costs. The period of time that the contractor was aware or should have been aware of the problem prior to reporting it is also pertinent.

(e) Whether the contractor was newly selected to manage the facility and whether it had sufficient time to discern the problem and report it prior to the incurrence of Avoidable Costs.

11. Subsection 970.5204–13 is amended by revising paragraph (e)(12), adding a note followed by new paragraph (e)(17)(iv) and a note followed by new paragraph (e)(36) as follows:

970.5204–13 Allowable costs and fixed fee (Management and Operating contracts).

* * * * *

(e) * * *

(12) *Fines and penalties.*

Note 1: In contracts with nonprofit contractors, use the following paragraph:

Fines and penalties, including assessed interest, resulting from violations of, or failure of the contractor to comply with, Federal, state, local or foreign laws and regulations, except when incurred as a result of compliance with the scope of work, specific terms and conditions, or other provisions of the contract or written instructions from the contracting officer authorizing in advance such payments. Civil or criminal penalties assessed under the Price-Anderson Amendments Act of 1988, 42 U.S.C. 2273, 2282, and the costs of litigation resulting from such assessments, are unallowable except as may be specifically provided in regulations implementing those civil and criminal penalty provisions.

Note 2: In contracts with profit making contractors, use the following paragraph:

Fines and penalties, including assessed interest and cost of litigation, that are incurred as a result of contractor or subcontractor negligence or willful misconduct where the breach of the legal duty of the contractor or its subcontractor giving rise to such fine or penalty involves an area of responsibility clearly placed on the contractor or the subcontractor. Civil or criminal penalties assessed under the Price-Anderson Amendments Act of 1988, 42 U.S.C. 2273, 2282, and the costs of litigation resulting from such assessments are also unallowable except as may be specifically provided in regulations implementing those civil or criminal penalty provisions.

* * * * *

(17) * * *

Note: In contracts with profit making contractors, add the following paragraph:

(iv) Or, are direct costs which are avoidable that are incurred by the contractor or subcontractor, at any tier or level, without any fault of DOE, exclusively as a result of the negligence or willful misconduct on the part of any of the contractor's or its subcontractor's personnel, at any tier or level, in performing work under the contract.

(A) Such direct costs may include, for example, additional programmatic expenses for research and development or production activities, and third party claims against the contractor, but shall not include scrap, waste and other routine damages or losses which occur as part of the cost of doing business and are reasonably anticipated and shall not include consequential damages.

(B) Costs of litigation incurred by the contractor or subcontractor in bringing or defending claims relating to these costs are also unallowable.

* * * * *

(35) * * *

Note: In contracts with profit making contractors, add the following clauses:

(36)(i) The costs of bonds and insurance, notwithstanding any other provision of this contract, are unallowable to the extent they are incurred to protect and indemnify the contractor against otherwise unallowable Avoidable Costs, such as fines and penalties, third party claims, negligently or willfully caused damage to or loss of Government property and theft or unauthorized use of government property, except and only to the

extent that such insurance or bond is required by the specific written direction of the Contracting Officer.

(ii) The unallowable costs provisions of subparagraph (e)(17)(iv) dealing with avoidable costs and subparagraph (i) of this clause, the profit making provision of the clause set forth at section 970.5204–13(e)(12), the clause set forth at section 970.5204–21(j), and the profit making provision of the clause set forth at section 970.5204–31 are not applicable to Small Businesses and Small Disadvantaged Businesses as defined in the clause of this contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns." All costs resulting from the actions or inactions of Small Businesses and Small Disadvantaged Businesses which would otherwise be determined to be Avoidable Costs are allowable costs to the contractor.

12. Section 970.5204–14(e) is amended by revising paragraph (e)(10), and by adding a note followed by new paragraph (e)(15)(iv) and a note followed by new paragraph (e)(34) as follows:

970.5204–14 Allowable costs and fixed fee (suport contracts).

* * * * *

(e) * * *

(10) Fines and penalties.

Note 1: In contracts with nonprofit contractors, use the following clauses:

Fines and penalties, including assessed interest, resulting from violations of, or failure of the contractor to comply with Federal, state, local or foreign laws and regulations, except when incurred as a result of compliance with the scope of work, specific terms and conditions, or other provisions of the contract or written instructions from the contracting officer authorizing in advance such payments. Civil or criminal penalties assessed under the Price-Anderson Amendments Act of 1988, 42 U.S.C. 2273, 2282, and the costs of litigation resulting from such assessments, are also unallowable except as may be specifically provided in regulations implementing those civil and criminal penalty provisions.

Note 2: In contracts with profit making contractors, use the following clause:

Fines and penalties, including assessed interest and costs of litigation, that are incurred as a result of contractor or subcontractor negligence or willful misconduct where the breach of the legal duty of the contractor or subcontractor giving rise to such fine or penalty involves an area of responsibility clearly placed on the contractor or subcontractor. Civil or criminal penalties assessed under the Price-Anderson Amendments Act of 1988, 42 U.S.C. 2273, 2282, and the costs of litigation resulting from such assessments are unallowable except as may be specifically provided in regulations implementing those civil or criminal penalty provisions.

* * * * *

(15) * * *

Note: In contracts with profit making contractors, add the following paragraph:

(iv) Or, are direct costs which are avoidable that are incurred by the contractor or subcontractor, at any tier or level, without any fault of DOE, exclusively as a result of the negligence or willful misconduct on the part of any of the contractor's or its subcontractor's personnel, at any tier or level, in performing work under the contract.

(A) Such direct costs may include, for example, additional programmatic expenses for research and development or production activities, and third party claims against the contractor, but shall not include scrap, waste, and other routine damages or losses which occur as part of the cost of doing business and are reasonably anticipated and shall not include consequential damages.

(B) Costs of litigation incurred by the contractor or subcontractor in bringing or defending claims relating to these costs are also unallowable.

* * * * *

(34) * * *

Note: In contracts with profit making contractors, add the following clauses:

(i) Notwithstanding any other provision of this contract, the costs of bonds and insurance are unallowable to the extent they are incurred to protect and indemnify the contractor against otherwise unallowable Avoidable Costs, such as fines and penalties, third party claims, negligently or willfully caused damage to or loss of government property and theft or unauthorized use of government property, except and only to the extent such insurance or bond is required by the specific written direction of the Contracting Officer.

(ii) The unallowable costs provisions of subparagraph (e)(15)(iv) dealing with Avoidable Costs and subparagraph (i) of this clause, the profit making provision of the clause set forth at 970.5204–14(e)(10), the clause set forth at 970.5204–21(j), and the profit making provision of the clause set forth at 970.5204–31 are not applicable to Small Businesses and Small Disadvantaged Businesses as defined in the clause of this contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns." All costs resulting from the actions or inactions of Small Business and Small Disadvantaged Businesses which would otherwise be determined to be Avoidable Costs are allowable costs to the contractor.

13. Section 970.5204–16 is amended by revising the heading of the clause and by revising Note 2 to read as follows:

970.5204–16 Payments and advances.

Payments and Advances (January, 1991)

* * * * *

Note 2: *When award-fee provisions in this clause are used, in lieu of paragraph (a), use the following text:*

(a) Payment of Basic Fee and Award Fee. The basic fee shall become due and payable in equal monthly installments, *provided*, however, that the contractor shall refund to the Government a portion of the basic fee if its performance during an evaluation period falls below the level of acceptable performance, i.e, a performance score of 75 or less. Such refund shall be at the rate of 5% of the basic fee allocated to the evaluation period in question for each performance point below 76, as assigned by the Government Fee Determination Official (FDO), provided that no more than 50% of the basic fee shall be required to be refunded under this provision. Award fees earned shall become due and payable following the issuance by the FDO of a Determination of Award Fee Earned, in accordance with the clause of this contract entitled "Award Fee."

* * * * *

14. Section 970.5204–18 is added as follows:

970.5204–18 Definition of Nonprofit and Profit Making Management and Operating contractors.

For purposes of subsections 970.5204–13(e)(12) and (e)(17)(iv), 970.5204–14(e)(10) and (e)(15)(iv), 970.5204–21(j) and 970.5204–31, a nonprofit management and operating contractor is one which receives no fee and is considered nonprofit under the laws of the jurisdiction where it is incorporated. A subsidiary may be a nonprofit contractor if all entities above it in the corporate structure are considered nonprofit under the laws of the incorporating jurisdiction. A Contracting Officer may also treat as nonprofit a contractor whose particular corporate organization or circumstances, in the judgment of the Contracting Officer, warrants such consideration, provided such contractor is a nonprofit organization as defined at 35 U.S.C. 201(i). All other management and operating contractors are considered profit making.

15. Section 970.5204–21 is amended by adding a new paragraph (j):

970.5204–21 Property.

* * * * *

(j) *Additional responsibility for risk of loss of government property.*

The following paragraph (j) shall be added in contracts with profit making contractors:

Notwithstanding the limitation of liability described in paragraph (f) above, the contractor will also be liable for direct costs and expenses resulting from damage to Government property as a direct result of contractor or subcontractor negligence or willful misconduct where the costs which are to be borne by the contractor are those incurred in effecting the repairs to, or replacement of, Government property. These Avoidable Costs do not include scrap, waste and other routine damages or losses which occur as part of the cost of doing business and are reasonably anticipated. Costs which shall not be reimbursable are the result of circumstances: (1) Clearly within the contractor's or subcontractor's sole and exclusive control and (2) resulting from acts or omissions of the contractor or subcontractor, in which the exercise of reasonable care would have avoided the loss or damage. In the event that such direct costs and expenses resulting from damage to Government property are also in part caused by third parties, other than DOE, such costs and expenses will not be reimbursed by DOE.

The allocation of financial responsibility between the contractor and such third party should be determined by the parties involved.

In addition, the contractor shall be liable for direct damage to, or loss of, Government property stemming from theft, embezzlement, unauthorized use, or any other ultra vires activity by any contractor or subcontractor personnel at any level. Under these circumstances the contractor shall be required to bear the cost of repairing or replacing the damaged or lost government property.

For purposes of this clause, negligence is the failure to exercise that standard of care which a reasonable and prudent person would exercise under the same or similar circumstances in an identical or similar environment.

16. Section 970.5204–31 is revised to read as follows:

970.5204–31 Litigation and claims.

(a) *Initiation of litigation.* The contractor may, with the prior written authorization of the Contracting Officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the Contracting Officer.

(b) *Defense and settlement of claims.*

Note 1: In contracts with nonprofit contractors, add the following clause:

The contractor shall give the Contracting Officer immediate notice in writing (1) Of any action, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract, and (2) of any claim against the contractor, the cost and expense of which is allowable under the clause entitled "Allowable Costs and Fixed-Fee." Except as otherwise directed by the Contracting Officer, in writing, the contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the contractor with respect to such action or claim. To the extent not in conflict with any applicable policy of insurance, the contractor may, with the Contracting Officer's approval, settle any such action or claim; shall effect, at the Contracting Officer's request, an assignment and subrogation in favor of the Government of all of the contractor's rights and claims (except those against the Government) arising out of such action or claim against the contractor; and, if required by the Contracting Officer, shall authorize representatives of the Government to settle or defend any such action or claim and to represent the contractor in, or to take charge of, any action. If the settlement or defense of an action or claim against the contractor is undertaken by the Government, the contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the contractor is not covered by a policy of insurance, the contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith and in such event the defense of the action shall be at the expense of the Government, *provided, however,* That the Government shall not be liable for such expense to the extent that it would have been compensated for by insurance which was required by law or by the written direction of the Contracting Officer, but which the contractor failed to secure or maintain through its own fault or negligence.

Note 2: In contracts with profit making contractors, add the following clause:

(1) The contractor shall give the Contracting Officer immediate notice in writing of any action, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract, and of any claim against the contractor the costs and expense of which the contractor would propose to submit as a claim for allowable costs under the terms of the clause entitled "Allowable Costs and Fixed-Fee."

(2) Except to the extent prohibited by the Major Fraud Act of 1988, 41 U.S.C. 256, the Contracting Officer may choose to instruct the contractor to proceed in good faith with the defense of the claim subject to the direction of the Government. Except as otherwise directed by the Contracting Officer in writing, the contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the contractor with respect to such action or claim. The contractor may, with the Contracting Officer's approval, settle any such action or claim. The contractor shall effect, at the Contracting Officer's request, an assignment and subrogation in favor of the Government of all of the contractor's rights and claims (except those against the Government) arising out of or related to such action or claim against the contractor, and, if required by the Contracting Officer, shall authorize representatives of the Government to settle or defend any such action or claim and to represent the contractor in, or to take charge of, any action. If the settlement or defense of an action or claim against the contractor is undertaken by the Government, the contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. If an adverse judgment is entered against the contractor in a case where the Contracting Officer has approved and/or directed the defense as provided in this paragraph, the costs of litigation and liability for any resulting claim or damages shall be at the expense of the Government, *provided, however,* that the Government shall not be liable for such expenses to the extent that they would have been compensated for by insurance which was required by law or by the written direction of the Contracting Officer, but which the contractor failed to secure or maintain through its own fault or negligence.

(3) Should the Contracting Officer not choose to approve or direct the defense of the litigation as provided in paragraph (2), the Government has no liability for the costs of litigation except as provided in paragraphs (4) and (5). The contractor may request that the Contracting Officer assume direction of the litigation at any point when new facts on the matter would so warrant; *provided, however,* That the Contracting Officer may assume direction of the litigation or direct settlement, without a request from the contractor, at any time during the litigation process when the Contracting Officer determines that it is in the best interest of the Government to do so, in which case the liability for any resulting claims or damages shall be at the expense of the Government.

(4) The contractor must inform the Contracting Officer of any proposed settlement agreement. The notification shall be supported by all information available to the contractor which is pertinent to the settlement.

(i) Except to the extent prohibited by the Major Fraud Act of 1988, 41 U.S.C. 256, the Contracting Officer has the option of accepting the settlement reached by the contractor. If the settlement is accepted, the Contracting Officer and the contractor shall negotiate the Government's share of the settlement and litigation expenses. Any agreement reached at this point shall be under the authority, and subject to the restrictions, of FAR 33.210.

(ii) If the contractor proceeds without, or otherwise does not obtain, Contracting Officer approval of the settlement agreement, the cost of the agreement and all related costs of litigation shall be at the contractor's own risk and expense.

(5)(i) If the contractor has suffered a final judgment, a claim for reimbursement of the costs of litigation or any resulting damages or both may be made to the Contracting Officer. Except to the extent prohibited by the Major Fraud Act of 1988, 41 U.S.C. 256, the Contracting Officer is authorized, in his discretion, to negotiate a settlement with the contractor.

(ii) Reimbursement of costs of litigation and judgments under subsection (5)(i) may be paid by the Government notwithstanding the prohibitions contained in subsections 970.5204–13(e) (12) and (17)(iv), subsections 970.5204–14(e) (10) and (15)(iv) and section 970.5204–21(j) and section 970.5204–31.

(6) *Certification of costs.* The Contracting Officer may not accept any settlement or otherwise authorize reimbursement of costs and/or damages where the contractor has not certified, in the form required by the clause of this contract entitled "Disputes," the facts known by the contractor, at the time the matter is submitted for review, which form the basis upon which the contractor seeks reimbursement of these costs.

(c) *Costs of Litigation.*

"Costs of Litigation" as used herein, includes, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the contractor to assist it; all elements of compensation, related costs, and expenses of employees, officers, and directors; and any similar costs incurred before, during, and after commencement of a judicial or administrative proceeding which bear direct and substantial relationship to the proceedings.

17. Section 970.5204–32 is revised to read as follows:

970.5204-32 Required bond and insurance-exclusive of Government property.

Note 1: In contracts with nonprofit contractors use the following clause:

The contractor shall procure and maintain such bonds and insurance as are required by law or by the written direction of the Contracting Officer. The terms and conditions of such bonds and insurance shall conform to the directions of the Contracting Officer. In view of the provisions of section 970.5204-21, "Property," the contractor shall not procure or maintain for its own protection any insurance covering loss or destruction of, or damage to, Government property.

Note 2: In contracts with profit making contractors use the following clause:

The contractor shall procure and maintain such bonds and insurance as are required by law or by the written direction of the Contracting Officer. The terms and conditions of any such bonds and insurance shall conform to the directions of the Contracting Officer. In view of the provisions of 970.5204-21, "Property," the contractor may, at its own expense and not as an allowable cost, procure for its own protection insurance covering loss or destruction of, or damage to, Government property to compensate the contractor for any unallowable or nonreimbursable costs incurred in connection with such property.

18. Sections 970.5204-55 and 970.5204-56 are added as follows:

970.5204-55 Ceiling on certain liabilities for profit making contractors.

(a) The contractor's potential financial obligations under the unallowable Avoidable Cost provisions contained in 970.5204-13(e)(12) and (e)(17)(iv), 970.5204-14(e)(10) and (e)(15)(iv), 970.5204-21(j), and 970.5204-31, (including (1) Noncriminal fines and penalties, (2) losses which are avoidable losses or other third party claims including the costs of defense of such litigation, (3) additional programmatic expenses which are Avoidable Costs, and (4) the costs of contractor responsibility for lost or damaged Government property) shall be limited to the amount of the actual award fee earned and the actual basic fee earned under the contract (or the amount of 6-months of fixed fee in the case of cost-plus-fixed fee contracts) in the evaluation period when the event or events which led to the imposition of the incurrence of costs or liabilities or the imposition of fines and penalties occurred. This limitation or ceiling does not apply to any other categories of unallowable costs, nor shall any other unallowable costs be utilized in the calculation of that ceiling for any evaluation period. In the case of continuing activities of the contractor which occur over a number of evaluation periods and result in costs or liabilities described above, the potential financial obligation of the contractor shall be limited to the amount of the actual award fee earned and the actual basic fee earned in the single evaluation period when the incident(s) or event(s) giving rise to the contractor's disallowed cost or expense took place. If it is not possible to relate or reasonably allocate particular activities to individual evaluation periods, the financial obligation of the contractor shall be limited to the amount of the actual award fee earned and actual basic fee earned in the evaluation period when the amount of such nonreimbursable costs or liabilities were finally determined. If the determination as to which award fee period(s) the incident or activity occurred resulting in the unallowable avoidable costs is made following the expiration of the contract, or the contractor is otherwise replaced, the actual award fee earned and the actual basic fee earned for the last evaluation period that the contract was in effect shall be utilized after deducting disallowed Avoidable Costs that were previously charged to the contractor during that period.

(b)(1) The financial obligations of a subcontractor, at any tier or level, under the unallowable Avoidable Cost provisions contained in 970.5204-13(e)(12) and (e)(17)(iv), 970.5204-14(e)(10) and (e)(15)(iv), 970.5204-21(j), and 970.5204-31, (including (i) Noncriminal fines and penalties, (ii) losses which are avoidable losses or other third party claims including the costs of defense of such litigation, (iii) additional programmatic expenses which are Avoidable Costs, and (iv) the costs of subcontractor responsibility for lost or damaged Government property) shall be limited to the cumulative amount of the fee or profit actually earned under the contract, whether cost-plus or fixed-price, during the six-month contractor evaluation period when the event or events which were caused by the subcontractor led to the incurrence of costs or liabilities or the imposition of fines and penalties occurred, *provided, however,* if the Contracting Officer cannot reasonably determine the amount of profit earned, the amount of profit earned shall be deemed to be 15% of the subcontract price, prorated to the applicable six-month award fee period, which shall be the liability cap for such period. This limitation or ceiling does not apply to any other categories of unallowable costs. In the case of continuing activities of the subcontractor which occur over a number of contract evaluation periods and result in costs or liabilities described above, the potential financial obligation of the subcontractor shall be limited to the amount of the fee or profit earned in the single contractor evaluation period when the incident(s) or event(s) giving rise to the subcontractor's disallowed cost or expense took place. If it is not possible to relate or reasonably allocate particular activities to individual contractor evaluation periods, the financial obligation of the subcontractor shall be limited to the amount of the actual fee or profit earned, or the percentage of the contract price designated by the Contracting Officer during the evaluation period when the amount of such nonreimbursable costs or liabilities were finally determined. If the determination as to which award fee period(s) the incident or activity occurred resulting in the unallowable avoidable costs is made following the expiration of the contract, or the subcontractor is otherwise replaced, the actual fee or profit earned, or the percentage of the contract price designated by the Contracting Officer for the last contractor evaluation period that the subcontract was in effect shall be utilized, after deducting disallowed Avoidable Costs that were previously charged to the subcontractor during that period.

(2) Where the amount of fee or profit earned by a subcontractor during the contractor's evaluation period is not sufficient to pay in full all Avoidable Costs incurred during that period, the excess amount of these costs will be reimbursed or otherwise treated as allowable costs by DOE; *provided, however,* That the M&O contractor shall be responsible for the payment of such Avoidable Costs in excess of the subcontractor's ceiling if such costs and/or damages were caused in whole or in part by the negligence of the M&O contractor; *provided, further,* That in any case the M&O contractor's obligation to pay Avoidable Costs incurred by the negligence of the subcontractor is limited to the extent that (i) The subcontractor's profit for that evaluation period was insufficient to pay the Avoidable Costs in full and (ii) the contractor's ceiling on Avoidable Costs liabilities specified in this subsection and in subparagraph (a) of this section has not been reached for that evaluation period. The contractor shall not require a subcontractor, at any tier or level, to provide financial guarantees for the payment of Avoidable Costs beyond the profit or fee earned by the subcontractor in the relevant contractor's six-month evaluation period.

(3) Appropriate provisions to implement the subcontractor liability ceiling contained in this subparagraph (b) shall be inserted into every subcontract, at any tier or level, entered into with an M&O contractor executed after the effective date of these regulations, *provided, however,* That such subcontract shall provide that to the extent that Avoidable Costs incurred by the negligence of the subcontractor are reimbursed by the Government to the M&O contractor, the M&O contractor shall reimburse its subcontractor for all such costs to the extent that such subcontractor has already paid, or incurred without reimbursement, such costs.

(c) The contractor shall be responsible for all costs and liabilities described in paragraph (a) and (b) of this section, up to the amount of the actual award fee earned and the actual basic fee earned in the pertinent evaluation period. The contractor agrees to provide, in such form and amount as shall be satisfactory to the Contracting Officer, a financial guarantee to assure that the contractor will have sufficient resources to satisfy all costs and liabilities up to the amount of the actual award fee earned and the actual basic fee earned for a period based upon the highest amount of fee received over the last four evaluation periods. Alternatively, at the election of the contractor, at the end of each evaluation period the Contracting Officer may retain a percentage of the award fee and basic fee as determined to be sufficient by the Contracting Officer to protect the interests of the Government. With respect to new contracts or contracts that have been in effect for less than two years (or four six-

month evaluation periods), the guarantee shall be in an amount that the Contracting Officer determines to be in the best interest of the Government, but not to exceed the amount of award fee and basic fee available for the upcoming evaluation period. The financial responsibility of the contractor and the guarantee or retainage of the contractor and the guarantee or retainage shall remain in effect for up to one year after the termination or expiration of the contract. Any costs or liabilities to third parties beyond the limitations described above would be reimbursed subject to the other provisions of the contract governing cost reimbursement. The contractor's potential financial risk for proceedings costs under the Major Fraud Act of 1988, 41 U.S.C. 256, or the civil or criminal penalties provisions of the Price-Anderson Amendments Act of 1988, 42 U.S.C. 2273, 2282, will not be limited except as provided in regulations implementing those provisions.

970.5204-56 Determining avoidable costs.

(a)(1) Avoidable Costs are those costs specified in 970.5204-13(e)(12) and (e)(17)(iv), 970.5204-14(e)(10) and (e)(15)(iv), 970.5204-21(j), and 970.5204-31 which are incurred as the result of negligence or willful misconduct by the contractor or its subcontractors, in carrying out the terms and conditions of the contract when:

(i) The work is clearly within the sole and exclusive control of the contractor or subcontractor; and

(ii) The increased costs or expenses result from the actions or inactions of the contractor or subcontractor; and

(iii) DOE is not responsible in any way for the act or omission which resulted in the additional costs.

(2) The cost and expenses of litigation, settlements, and related litigation costs (including attorneys fees), fines, penalties, judgments and liabilities resulting from administrative findings, and damage to, or loss of, Government property when carrying out well understood non-experimental work and damage to, or loss of, Government property as the result of theft, embezzlement or other unauthorized use are unallowable to the extent that the acts or omissions resulting in these costs are Avoidable Costs as defined in paragraph (1) above. Such costs are unallowable except as specifically authorized by the Contracting Officer and within the scope of work in the contract.

(b) For purposes of this section, negligence is the failure to exercise that standard of care which a reasonable and prudent person would exercise under the same or similar circumstances in an identical or similar environment.

(c) Avoidable Costs shall not include the cost of losses or damages incurred by the contractor as a result of the acts or omissions of employees who, during the phase-in period of a new contract, the contractor is required to employ as a result of assuming the management of a DOE facility. The length of this phase-in period shall be — months. It shall in no event, however, exceed twelve months. The contractor is always responsible for the acts or omissions of any employee hired directly by the contractor.

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Part III

Environmental Protection Agency

40 CFR Part 136 Water Programs; Guidelines Establishing Test Procedures for the Analysis of Pollutants; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL 3813-5]

Water Programs; Guidelines Establishing Test Procedures for the Analysis of Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule amends the Guidelines Establishing Test Procedures for the Analysis of Pollutants under section 304(h) of the Clean Water Act. This amendment approves a method for the analysis of seventeen tetra-through octa-chlorinated dioxin and furan compounds. This technique, isotope dilution high resolution GC/MS, is substantially the same in both precision and accuracy to the techniques already approved under 40 CFR part 136. Approved analytical techniques are used for determining compliance with effluent limitations, guidelines and standards and in pretreatment standards set forth at 40 CFR parts 402 through 699 (unless otherwise specially noted or defined in those parts.).

DATES: Comments on this proposal must be submitted on or before March 11, 1991.

ADDRESSES: Comments on this proposal should be labeled as "section 304(h): Comments on Proposed Rule" and submitted to: Mr. James Lichtenberg, Environmental Monitoring Systems Laboratory-Cincinnati, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268.

That portion of the public docket proposed for incorporation by reference into 40 CFR part 136 is available upon request during this comment period from Mr. James Lichtenberg, Environmental Monitoring Systems Laboratory—Cincinnati, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268. Telephone Number: (513) 569–7306.

The entire public docket will be available for inspection from 8 a.m. to 4 p.m. in EPA's Public Information Reference Unit, room M2904 (rear of EPA Library), PM–211D, 401 M Street, SW., Washington, DC 20460, and at the Environmental Monitoring Systems Laboratory—Cincinnati, at the Andrew W. Breidenbach Environmental Research Center, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The EPA information regulation (40 CFR part 2) allows the Agency to charge a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Lichtenberg at the address listed above, or call (513) 569–7306.

SUPPLEMENTARY INFORMATION

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I. Authority

Today's proposal is pursuant to the authority of sections 301, 304(h), and 501(a) of the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq* (the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987) 33 U.S.C. 1314(h), 1361(a) 86 Stat. 816, Pub. L. 92–500, 91 Stat. 1567, Pub. L. 95–217; 100 Stat. 7, Pub. L. 100–4 (the "Act"). Section 301 of the Act prohibits the discharge of any pollutant into navigable waters unless the discharge complies with a NPDES permit, issued under section 402 of the CWA. Section 304(h) of the Act requires the Administrator of the EPA to "promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit applications pursuant to section 402 of this Act." Section 501(a) of the Act authorizes the Administrator to "prescribe such regulations as are necessary to carry out his function under this Act."

The Administrator has also made these test methods applicable to monitoring and reporting of NPDES permits (40 CFR part 122, §§ 122.21, 122.41, 122.44, and 123.25), and implementation of the pretreatment standards issued under section 307 of the CWA (40 CFR part 403, §§ 403.10 and 402.12).

II. Background and History

A. Analytical Methods Under 40 CFR Part 136

The CWA establishes two principal bases for effluent limitations. First, existing discharges are required to meet technology-based effluent limitations that reflect the best available technology economically achievable. New source discharges must meet the best demonstrated technology-based controls. Second, where necessary, additional requirements are imposed to assure attainment and maintenance of water quality standards established by the States under section 303 of the CWA. In establishing or reviewing NPDES permit limits, EPA must ensure that the limits will result in the attainment of water quality standards and protect designated water uses, including an adequate margin of safety.

To ensure compliance with these effluent limitations, EPA promulgated "Guidelines Establishing Test Procedures for the Analysis of Pollutants" in 40 CFR part 136 on October 16, 1973 (38 FR 28758). These Guidelines, as amended, provide test procedures for 262 different parameters. These procedures apply to the analysis of inorganic (metal, non-metal, mineral), nutrient, demand, residue, radiological, organic, bacteriological, and physical parameters. Today's proposal would add a method to this list of nationally-approved methods. EPA approves methods which can provide generally consistent and reliable results. Such methods must be scientifically validated, provide for reasonable precision and recovery profiles, and provide for quality control.

An alternate test procedure program is also provided in 40 CFR 136.5, whereby the Administrator may approve alternate test procedures developed and proposed by dischargers or other persons. If dischargers or other persons wish to use such alternate test procedures, they must apply to the State or Regional EPA permitting office for limited approval and to the Director of the Environmental Monitoring and Support Laboratory (now the Environmental Monitoring Systems Laboratory) in Cincinnati for nationwide approval.

Finally, there may be discharges from some particular industries which need to be regulated on the basis of parameters or test procedures which have not been proposed and approved within the scope of the test procedure guidelines under 40 CFR part 136. EPA may include such parameters as alternate test procedures within the rulemaking for these

industries in accordance with the provisions prescribed at 40 CFR 401.13, "Test Procedures for Measurements."

B. Dioxin Testing

In 1976 the U.S. District Court for the District of Columbia entered a consent decree requiring the Environmental Protection Agency (EPA) to measure and limit 65 compounds and classes of compounds in effluents discharged to receiving waters in the United States (NRDC *v* EPA). The list of 65 was subsequently refined by EPA to a list of 126 specific analytes termed the "Priority Pollutants" and codified as the section 307(a) list of "toxic pollutants" in the 1977 Clean Water Act (CWA) amendments. Priority Pollutant Number 126 is 2,3,7,8 -tetrachlorodibenzo-*p*-dioxin (2,3,7,8-TCDD), one of the most toxic substances known to man.

At the time of the inception of EPA, several other Federal agencies were involved in the regulation of dioxin-containing materials. In 1970, USDA cancelled registration of the herbicide 2,4,5-Trichlorophenoxyacetic acid (2,4,5-T) for use on human food crops, near bodies of water, and around homes. The cancellation was based on the contamination of the herbicide with low levels of 2,3,7,8-TCDD. In 1971, following a recommendation from the National Academy of Science, EPA restored the registration of 2,4,5-T for use on forests, range lands, and in rice fields, but limited the allowable levels of 2,3,7,8-TCDD in new stocks of the herbicide to less than 0.1 parts per million (ppm). In 1979, responding to new data on the effects of dioxin on laboratory animals and health effects in a population of women living in Oregon near where 2,4,5-T was sprayed, EPA issued an emergency suspension of 2,4,5-T use.

Also in 1979, EPA published the first and only Agency analytical method for 2,3,7,8-TCDD to be promulgated under section 304(h). Method 613 was published in FR 44 (233), on December 3, 1979. The method is specific to the one isomer, 2,3,7,8-TCDD, and has an approximate detection limit of 2000 parts per quadrillion (ppq) in water.

In 1982, EPA confirmed earlier findings of the Centers for Disease Control (CDC) that the several areas in and around Times Beach, Missouri, were significantly contaminated with 2,3,7,8-TCDD as a result of the disposal of waste industrial oils. The problems at Times Beach, and those later identified at Love Canal, in Niagara Falls, New York, increased public awareness of the potential for dioxin contamination. Partly in response to this awareness, the Agency engaged in an increased level of effort in the development of analytical methods for dioxins, and in evaluation of the potential toxic effects of the polychlorinated dibenzo-p-dioxins (PCDD) and polychlorinated dibenzofurans (PCDF).

In December 1983, EPA issued its Dioxin Strategy for identifying, investigating, and cleaning up sites contaminated by dioxin. One aspect of that strategy was a comprehensive national survey of potentially contaminated industrial sites. The report on the National Dioxin Study, Tiers 3, 5, 6, and 7 was issued in February 1987 (EPA 440/4–87–003). The methods employed for that study were restricted to the analysis of 2,3,7,8-TCDD, and were either variants of Method 613 or research methods employed by three Agency ORD laboratories and an academic institution under contract.

Through the Office of Solid Waste (OSW), the EPA published two draft methods for the analysis of PCDDs and PCDFs. Method 8280, included in the September 1986 release of the OSW method manual SW–846, provided for the analysis of all seventeen 2,3,7,8-substituted PCDDs and PCDFs, at levels of approximately 100 parts per trillion (ppt) in water, and 1 part per billion (ppb) in soils. In 1987, a draft of a more sensitive method, Method 8290, was released for comment; a revision of Method 8290 was prepared in 1989 for the Office of Solid Waste.

In 1984, EPA published a revision of earlier water quality criteria in partial fulfillment of both paragraph 11 of the consent decree and section 303(c) of the CWA. The document entitled "Ambient Water Quality Criteria for 2,3,7,8-Tetrachlorodibenxo-p-dioxin" (EPA 440/5–84–007) established the level of 0.013 parts per quadrillion as the concentration in water that corresponds to a human cancer risk of 10^{-6}. This level is below the ability of any method at that time or the present to detect this analyte.

In 1987, in an effort to address risks posed by PCDDs and PCDFs in the environment, EPA adopted an interim procedure for estimating the hazard and dose-response of complex mixtures of PCDDs and PCDFs that was based on dioxin "toxicity equivalence" factors (TEFs) (EPA/625/3–87/012). That procedure, updated in 1989 (EPA/625/3–89/016), recognized that structure-activity relationships exist between the chemical structure of a particular PCDD/PCDF "and its ability to elicit a biological/toxic response in various *in vivo* and *in vitro* test systems". Of the 210 possible chlorinated dibenzo-p-dioxins and chlorinated dibenzofurans, the seventeen isomers that bear chlorine atoms in the 2,3,7, and 8 positions of their respective structures are the compounds of greatest concern. To aid in the assessment of risks to human health and the environment, a factor is assigned to each of these seventeen 2,3,7,8-substituted PCDDs and PCDFs that relates the toxicity of that isomer to a concentration of the most toxic isomer, 2,3,7,8-TCDD. These factors are called TEFs. The concentrations of any of the seventeen isomers that are detected in an environmental sample can then be adjusted by the TEF and summed, yielding a concentration of 2,3,7,8-TCDD with an equivalent toxicity.

Given that PCDD/PCDF isomers other than 2,3,7,8-TCDD have been identified in effluents from pulp and paper mills and in samples from other industries, and considering that the TEF-adjusted concentrations of the 2,3,7,8-substituted PCDDs and PCDFs are additive, there has been increased need for analyses of PCDDs and PCDFs other than 2,3,7,8-TCDD. The patterns of occurrence of the other PCDDs and PCFDs have also been demonstrated to be of use in differentiating potential sources of environmental contamination.

III. Summary of Proposed Rule

A. Introduction

The proposed method, Method 1613, is a high resolution capillary column gas chromatography (HRGC)/high resolution mass spectrometry (HRMS) method for analysis of tetra- through octa-chlorinated dibenzo-p-dioxins (PCDDs) and dibenzofurans (PCDFs) using isotope dilution. Method 1613 was developed by the USEPA Office of Water Regulations and Standards (OWRS), Industrial Technology Division (ITD) in response to the need for analysis of treated effluents at low levels of 2,3,7,8-TCDD (10 ppq). The method was designed for regulatory development purposes and compliance monitoring under the National Pollutant Discharge Elimination System (NPDES, CWA section 402).

The seventeen dioxin and furan compounds identified in this amendment may be determined in waters, soils, sludges, and other matrices using the proposed method. The detection limits of the method are usually dependent on the level of interferences rather than instrumental limitation. The minimum levels identified in this amendment typify the minimum quantities that can be determined in environmental samples, using the method. Actual detection limits for a given matrix would need determination on a case-by-case basis.

The GCMS portions of the proposed method are for use only by analysts experienced with HRGC/HRMS or under the close supervision of such qualified persons. Each laboratory that uses the method must demonstrate the ability to generate acceptable results using the procedure in section 8.2 of the method.

B. Summary of Proposed Method

^{13}C-labeled analogs of fifteen of the 2,3,7,8-substituted PCDDs and PCDFs are added to each sample prior to extraction. Samples containing coarse solids are prepared for extraction by grinding or homogenization. Water samples are filtered and then extracted with methylene chloride using separatory funnel procedures. The particulates from the water samples, soils, and other finely divided solids are extracted using a combined Soxhlet extraction/Dean-Stark azeotropic distillation. Prior to cleanup and analysis, the extracts of the filtered water and the particulates are combined.

After extraction, $^{37}Cl_4$-labeled 2,3,7,8-TCDD is added to each extract to measure the efficiency of the cleanup process. Sample cleanup may include back extraction with acid and/or base, and gel permeation, alumina, silica gel, and activated carbon chromatography. High performance liquid chromatography (HPLC) may be used for further isolation of the 2,3,7,8-isomers or other specific isomers or congeners.

After cleanup, the extract is concentrated to near dryness. Immediately prior to injection, two internal standards are added to each extract, and a 1 uL aliquot of the extract is injected into the gas chromatograph. The analytes are separated by the GC and detected by a high resolution ($\geq$10,000) mass spectrometer. Two exact masses (m/z's) are monitored for each analyte.

Dioxins and furans are identified by comparing GC retention times and the ion abundance ratios of the m/z's with the corresponding retention time ranges of authentic standards and the theoretical ion abundance ratios of the exact m/z's. Isomers and congeners are identified when the retention times and m/z abundance ratios agree within pre-defined limits. By using a GC column or columns capable of resolving the 2,3,7,8-substituted isomers from all other tetra-isomers, the 2,3,7,8-substituted isomers are identified when the retention time and m/z abundance ratios agree within pre-defined limits of the retention times and exact m/z ratios of authentic standards.

Quantitative analysis is performed by GCMS using selected ion current profile (SICP) areas, in one of two ways. For the fifteen 2,3,7,8-substituted isomers for which labeled analogs are available, the GCMS system is calibrated and the compound concentration is determined using an isotope dilution technique. The quantitative result for each of these fifteen isomers is corrected for the recovery of the corresponding isotopically-labeled compound from the sample, which serves to correct for the variability of the entire analytical procedure. Although a labeling analog of the octachlorinated dibenzofuran (OCDF) is available, using high resolution mass spectrometry it produces an m/z that may interfere with the identification and quantitation of the unlabeled octachlorinated dibenzo-*p*-dioxin (OCDD). Therefore, this labeled analog has not been included in the calibration standards, and the unlabeled OCDF is quantitated against the labeled OCDD. Because the labeled analog of 1,2,3,7,8,9-HxCDD is used as an internal standard (i.e., not added before extraction of the sample), it cannot be used to quantitate the unlabeled compound by strict isotope dilution procedures. Therefore, the unlabeled 1,2,3,7,8,9-HxCDD is quantitated using the average of the responses of the labeled analogs of the other two 2,3,7,8-substituted HxCDD's, 1,2,3,4,7,8-HxCDD and 1,2,3,6,7,8-HxCDD. As a result, the concentration of the unlabeled 1,2,3,7,8,9-HxCDD is corrected for the average recovery of the other two HxCDD's.

For non-2,3,7,8-substituted isomers and the total concentrations of all isomers within a level of chlorination (i.e., total TCDD), concentrations are determined using response factors from the calibration of labeled analogs at the same level of chlorination.

The quality of the analysis is assured through reproducible calibration and testing of the extraction, cleanup, and GCMS systems.

C. Method Parameters and Units

Method parameters are listed below, identified by CAS Registry numbers.

PCDDs/PCDFs isomer/congener [1]	CAS registry
2,3,7,8-TCDD	1746-01-6
Total—TCDD	41903-57-5
2,3,7,8-TCDF	51207-31-9
Total—TCDF	55722-27-5
1,2,3,7,8-PeCDD	40321-76-4
Total—PeCDD	36088-22-9
1,2,3,7,8-PeCDF	57117-41-6
2,3,4,7,8-PeCDF	57117-31-4
Total—PeCDF	30402-15-4
1,2,3,4,7,8-HxCDD	39227-28-6
1,2,3,6,7,8-HxCDD	57653-85-7
1,2,3,7,8,9-HxCDD	19408 74-3
Total—HxCDD	34465-4608
1,2,3,4,7,8-HxCDF	70648-26-9
1,2,3,6,7,8-HxCDF	57117-44-9
1,2,3,7,8,9-HxCDF	72918-21-9
2,3,4,6,7,8-HxCDF	60851-34-5
Total—HxCDF	55684-94-1
1,2,3,4,6,7,8-HpCDD	35822-46-9
Total—HpCDD	37871-00-4
1,2,3,4,6,7,8-HpCDF	67562-39-4
1,2,3,4,7,8,9-HpCDF	55673-89-7
Total—HpCDF	38998-75-3
OCDD	3268-87-9
OCDF	39001-02-0

[1] Polychlorinated dioxins and furans:
TCDD = Tetrachlorodibenzo-*p*-dioxin
PeCDD = Pentachlorodibenzo-*p*-dioxin
HxCDD = Hexachlorodibenzo-*p*-dioxin
HpCDD = Heptachlorodibenzo-*p*-dioxin
OCDD = Octachlorodibenzo-*p*-dioxin
TCDF = Tetrachlorodibenzofuran
PeCDF = Pentachlorodibenzofuran
HxCDF = Hexachlorodibenzofuran
HpCDF = Heptachlorodibenzofuran
OCDF = Octachlorodibenzofuran

Test results are expressed in units of pg/L for aqueous samples. For samples containing one percent or greater solids (soils, sediments, aqueous sludges, filter cake, compost), test results are reported in units of ng/Kg, based on the dry weight of the sample.

D. Method Quality Control

Method 1613 provides a QA/QC program that equals or exceeds that of the 600 series methods promulgated under CWA section 304(h).

Each laboratory that uses the proposed method is required to operate a formal quality assurance program. The minimum requirements of this program consist of an initial demonstration of laboratory capability (described in Method 1613, section 8.2), analysis of samples spiked with labeled compounds to evaluate and document data quality, and analysis of standards and blanks as tests of continued performance. Laboratory performance is compared to established performance criteria to determine if the results of analyses meet the performance characteristics of the method. If the method is to be applied routinely to samples containing high solids with very little moisture (e.g., soils, filter cake, compost) or to an alternate matrix, the high solids reference matrix or the alternate matrix is substituted for the reagent water matrix in all performance tests.

The method requires spiking of all samples with labeled compounds to monitor method performance. When results of these spikes indicate atypical method performance for samples, the samples are diluted to bring method performance within acceptable limits.

The method requires calibration verification and the analysis of the

precision and recovery standard every shift to demonstrate that the analytical system is in control. Analysis of blanks is required to demonstrate freedom from contamination.

Laboratories using the method are required to maintain records to define the quality of data (i.e., data accuracy statements) that are generated.

Specific method quality control requirements are described in paragraphs 1–8 below.

Note: Requirements apply separately to each individual instrument and column/detector system. All Method 1613 performance criteria must be met on an instrument and column/detector system prior to the analysis of samples, blanks, or precision and recovery standards on that system.

1. *Instrument calibration and system performance:* Initial and continuing calibration and associated system performance checks are required on each instrument and column/detector system.

a. GCMS system performance checks and initial 5-point calibration are performed for all target (unlabeled) analytes and labeled compounds (section 7, Method 1613). System performance checks to demonstrate that method specifications for relative retention times, mass spectrometer resolution, ion abundance ratios, Minimum Levels, absolute retention times, retention time windows, and isomer specificity have been met, are required. Initial calibration and successful completion of system performance checks are required prior to the analysis of any samples on the analytical system, and if calibration verification criteria cannot be met for any compound at any time (sections 14.3.4 and 14.4.3, Method 1613).

b. Verification of system performance and calibration are required for all target (unlabeled) analytes and labeled compounds through analysis of the VER standard (CS3) (Table 4, Method 1613) and isomer specificity test standards (section 6.16, Table 5, Method 1613) and through demonstration that mass spectrometer resolution and retention time specifications are met, at the beginning of each 12-hour shift during which samples are analyzed (sections 14.1–14.4, Method 1613). If recovery of labeled compound spiking standards in a diluted sample fall outside method limits, then calibration verification is performed at that time (section 17.4, Method 1613).

2. *Attainment of Minimum Levels:* Whenever initial calibration is performed, the method requires demonstration that each instrument and column/detector system meets the minimum levels (MLs) specified for each analyte in the method (Table 2, Method 1613), through analysis of the CS1 calibration solution (sections 7.2 and 7.2.3, Method 1613). The capability of the instrument and column/detector system to attain method MLs for all target compounds must be demonstrated prior to the analysis of any samples on that system.

3. *Precision and recovery analyses:* Initial and ongoing precision and recovery (PAR) of all target (unlabeled) analytes and labeled compounds are required on each instrument and column/detector system.

a. Initial demonstration of ability to generate acceptable precision and recovery (IPR) by analysis of multiple samples prepared from the PAR standard (section 8.2, Method 1613).

b. To establish ongoing precision and recovery (OPR), the analysis of a single sample prepared from the PAR standard and extracted with each sample set (section 14.5, Method 1613) is required. (A sample set is comprised of samples started through the extraction process on the same 12-hour shift, to a maximum of 20 samples.)

4. *Ongoing sample QC:* a. All samples and QC aliquots are spiked with the diluted labeled compound spiking standard, to assess method performance on the sample matrix (section 8.3, Method 1613).

b. To assess method precision and recovery, after the analysis of five samples of a given matrix type, an accuracy interval is determined based on computations of average percent recovery and the standard deviation of the percent recovery for labeled compound analyses. The laboratory is required to maintain and update accuracy assessments on a regular basis. (Section 8.4, Method 1613.)

5. *Complex sample reanalyses:* Sample dilution and reanalysis of aqueous samples and reanalysis of a smaller portion of solid samples is required if labeled compound recoveries fall outside method limits in the original sample analysis (sections 8.3.3 and 17, Method 1613).

6. *Blanks:* A minimum of one reagent water blank, high solids reference matrix blank, paper matrix blank, or alternate reference matrix blank analysis, as appropriate to the sample matrix type, is prepared once for each sample set, and analyzed immediately after analysis of the OPR aliquot, and when contamination is suspected or detected (section 8.5, Method 1613). (A sample set is comprised of samples started through the extraction process on the same 12-hour shift, to a maximum of 20 samples.)

7. *Analysis of standards:* Analysis of all standard solutions is required within 48 hours of preparation and on a monthly basis thereafter, to monitor stability (section 6.17, Method 1613). The laboratory must use standard reference solutions for EPA or the NIST (or secondary standards traceable thereto), or from sources which attest to the authenticity and concentrations of the standard solutions.

8. *Data Storage:* Storage of each signal at its exact m/z, response ratios and response factors, multi-point calibration curves, computations of relative standard deviations (coefficient of variation) used to test calibration linearity, statistics on initial and ongoing precision and recovery, and other pertinent data necessary for rigorous compound identification and quantification, is required (section 7.8, Method 1613).

The method requires adherence to standard laboratory practices for cleanliness and environment, and to the specifications of the method for glassware and apparatus, reagents, solvents, and safety. Additional guidelines regarding general laboratory procedures are to be followed as specified in sections 4 and 5 of the *Handbook for Analytical Quality Control in Water and Wastewater Laboratories*, EPA–600/4–79–019.

IV. Method Validation

The current version of Method 1613 (Revision A, April, 1990) is a result of extensive peer review and comment, intralaboratory validation, and the analysis of over 500 samples of industrial and municipal wastewaters and sludges.

EPA has conducted a single-laboratory validation of the method and of the SDS extraction technique for municipal sewage sludge. The SDS study, described briefly here, is detailed in the document "Performance Evaluation of Method 1613," March 1990, USEPA Office of Water, OWRS, ITD. In April 1990, the EPA conducted a single-laboratory method detection limit (MDL) study for Method 1613 determination of 2,3,7,8–TCDD and 2,3,7,8–TCDF. This study, described briefly here, is detailed in the document, "Summary Report, USEPA, ITD, Method Detection Limit Study for Method 1613 Determination of 2,3,7,8–TCDD and 2,3,7,8–TCDF," May 1990, USEPA Office of Water, OWRS, ITD.

A multiple-laboratory international validation study is currently being initiated. The study will use previously prepared extracts of pulp and paper effluents and sludges to create a series

of simulated effluent samples for extraction and analysis. At least fourteen laboratories from five countries are scheduled to participate in this study. This study is described in the document, "Study Plan for the Evaluation of Method 1613", May 1990 USEPA Office of Water, OWRS, ITD. EPA intends to provide a notice of data availability and solicit comments on the results of this study.

A. Results of Method Validation Studies

This single-laboratory test involved the use of a new extraction technique for solid matrices. The SDS technique was taken from published work (Lamparski and Nestrick, 1989) performed at Dow Chemical Company, and modified for use in Method 1613.

A Soxhlet extraction procedure is specified in many analytical methods for the extraction of polychlorinated dibenzo-*p*-dioxins and polychlorinated dibenzofurans (PCDDs/PCDFs) from solid and semi-solid matrices such as soil and sludge. Basically, the procedure involves the repeated refluxing of an organic solvent such that the solvent percolates through the sample matrix and extracts the compounds of interest by dissolution.

Typically, when using Soxhlet extraction, steps must be taken to remove the water from the sample matrix prior to extraction because the organic solvents used for extraction are not water miscible. This is particularly true when extracting samples with high moisture contents such as sludge. Techniques such as filtration and centrifugation have been employed to remove the water in other analytical procedures. The addition of sodium sulfate to remove the water from the sample has been extensively employed in the analysis of organic compounds from environmental matrices. Each of these techniques involves additional handling of the sample, and therefore increases the potential for introduction of contaminants, loss of analytes, or loss of the entire sample. Since each sample handling step has the potential to increase the variability of the data produced by the overall analytical method, it is critical to minimize sample handling steps when dealing with 2,3,7,8–TCDD at the levels addressed in the Method 1613 (10–25 ppq).

Another technique for removing water from a sludge sample and other types of wet samples involves the use of a Dean Stark water separator in conjunction with a Soxhlet extractor. This piece of glassware fits between the Soxhlet extractor and the condenser, and offsets the condenser to one side. This offset provides space for a dogleg that drops straignt down from the bottom of the condenser. Ground glass joints connect the separator to the Soxhlet extractor and the condenser, and the dogleg ends in either a graduated receiving tube or a stopcock. The resulting combined apparatus is referred to as the Soxhlet-Dean Stark apparatus, abbreviated as SDS.

Water is removed from the sample during extraction by the process of azeotropic distillation. Originally designed for processes involving xylene, the separator works equally well with toluene, the extraction solvent specified in Method 1613, because toluene and water form an azeotrope that boils at a temperature of 85 °C. When the azeotropic vapor condenses, the liquid drops into the dogleg, where the toluene floats on top of the more dense water, and eventually flows back into the distilling flask. The use of a separator with a stopcock allows the laboratory to draw off the collected water without interrupting the extraction process.

The SDS extraction technique offers the potential for enhancing analytical precision and decreasing bias by reducing the number of sample handling steps and more effectively extracting the sample. It has a noteworthy advantage over simple Soxhlet extraction in that the percent moisture in the sample may be determined directly from the sample being extracted, rather than from another aliquot of the sample which may not be truly representative of the aliquot that is extracted.

The SDS combination offers a significant advantage over the use of sodium sulfate to remove the water from the sample matrix. Sodium sulfate drys the sample by hydrating itself with the water in the sample. During the process of extraction, some of this water of hydration may be lost back to the sample or to the solvent and, as a result, the dehydrated sodium sulfate may seal off pores in the surface of the solid matrix. This process effectively traps the analytes of interest within the matrix, thus preventing their extraction.

Another potential problem with the use of sodium sulfate in the analysis of very low levels of PCDDs/PCDFs is the loss of analytes by adsorption of contaminants on the reagent itself. The reagent is typically purified on any organic contaminants by heating it in a muffle furnace at high temperatures. Any organic material present is charred, often given the reagent a light gray cast. While the heat treatment effectively prevents this organic material from being extracted from the sodium sulfate, PCDDs/PCDFs are strongly adsorbed by activated carbon, and the charred material represents a source of activated carbon. Because of the potential loss of analytes through the use of sodium sulfate, ITD has chosen to avoid the use of this reagent during the extraction of samples.

Although Dow has published data on the use of the SDS in other solid matrices (Lamparski and Nestrick, 1989), the first phase in the validation on Method 1613 consisted of an intralaboratory study to ascertain the comparability of the SDS procedure with the more commonly used Soxhlet procedure when applied to municipal sewage sludge.

1. Experimental Design of SDS Study

To demonstrate the comparability of the SDS procedure proposed for EPA Method 1613 with the Soxhlet procedure currently employed in other analytical methods for PCDDs/PCDFs, a five gallon sample of sewage sludge was sent to an EPA contract laboratory for analyses. Industrial Technology Division Episode 1519 consisted of nine analyses of the sludge sample, as follows:

—3 analyses of the unspiked sludge, extracted by Soxhlet
—3 analyses of sludge spiked with PCDDs/PCDFs, extracted by Soxhlet
—3 analyses of sludge spiked with PCDDs/PCDFs, extracted by SDS

A preliminary examination of the unspiked sludge data indicated that very few of the PCDDs/PCDFs were detected in these samples. Hence, it would have been impossible to collect statistically meaningful results from an experiment in which the unspiked sludge was extracted by both procedures. Therefore, the unspiked data were not considered further.

The sludge was spiked by the laboratory with all 17 2,3,7,8–substituted PCDD/PCDF isomers prior to extraction. Replicate aliquots were extracted by Soxhlet alone and by the SDS procedure. Because this work was done during the earliest stages of development of Method 1613, the laboratory utilized Method "8290x" for the analyses. (For the purpose of testing the SDS procedure, this instrumental aspects of "8290x" were deemed to be sufficiently similar to Method 1613.) The resulting data were evaluated to determine if the SDS procedure provided comparable or better results than the Soxhlet procedure alone.

The results of this study are summarized in "Peformance Evaluation of Method 1613, "USEPA, OWRS, ITD, March 1990.

2. SDS Study Conclusions

Based on this study, the data for 1,2,3,4,6,7,8–HpCDD and 2,3,7,8–TCDF do indicate a significant difference

between the extraction procedures, with the SDS extraction yielding higher mean concentrations (recoveries) of these two isomers. However, one cannot differentiate between the means of the concentrations of 15 of the spiked analytes determined using the two extraction procedures. The lack of differentiation between those mean concentrations may reflect the small size of the data sets tested.

Although the strength of this conclusion is limited by the size of the data set, the data indicate that the SDS procedure is as good an extraction method as the Soxhlet procedure alone, and better for at least two isomers. Given this, and the advantages that fewer sample handling steps are involved in the SDS procedure and the percent solids content of the sample may be determined directly from the aliquot extracted for analysis, the SDS procedure was incorporated into Method 1613.

B. Results of MDL Study

A single-laboratory method detection limit (MDL) study of Method 1613 was undertaken in April 1990. The basic design of this study was in accordance with the procedure for determining MDLs specified in appendix B of 40 CFR part 136, as published in the October 26, 1984 **Federal Register**. The major requirements of this procedure are:

- At least seven (7) aliquots of reagent water must be spiked with the analytes of interest.
- Spike levels should be in the range of one to five times the laboratory's estimate of the detection limit of each analyte.
- Analyze all replicates and calculate a mean and standard deviation of the concentration of each analyte.
- Calculate the MDL as the standard deviation times the Students *t* value for (n-1) degrees of freedom, where n is the number of replicates.

According to 40 CFR part 136, the MDL is defined as the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

For the purposes of this study, the laboratory chose to analyze eight replicate samples instead of the minimum of seven.

1. Estimated Detection Limits

As noted above, the **Federal Register** procedure requires that each replicate is spiked with a solution containing target analytes at a concentration between one and five times the laboratory's *estimated detection limit*. The specifications in 40 CFR part 136 also list four ways in which to determine an estimate of the detection limit of the method. The first of these options is to estimate the concentration value that corresponds to an instrument signal-to-noise ratio of 2.5 to 2.0. Using this criteria, the laboratory calculated an estimated detection limit of 25 ppq for 2,3,7,8-TCDD and 2,3,7,8-TCDF as follows:

- The lowest calibration solution (CSI) in Method 1613 has a 2,3,7,8-TCDD concentration of 0.5 ng/mL and presents a peak with a signal to-noise ratio of at least 10.
- Each sample analyzed by Method 1613 has a final volume of 20 uL. By multiplying the final volume of the sample times the concentration of TCDD in the CS1 solution, it was determined that the sample with a concentration equivalent to that of the lowest calibration standard would have a final TCDD concentration of 10 pg/L or 10 ppq. This concentration is equal to the "Minimum Level" described in Method 1613, and is derived in the same fashion.
- The Minimum Level in Method 1613 was equated with the American Chemical Society's (ACS) concept of the Limit of Quantitation (LOQ). The ACS further defines a Limit of Detection (LOD) as approximately one-third of the LOQ. Thus, the laboratory set their estimated detection limit as one-third the Minimum Level, or 3.3 ppq. This figure represents the estimated detection limit at 100% recovery, and should yield an instrumental signal of at least 2.5 times the background noise.
- Since Method 1613 specifies analyte quantitation by isotope dilution and allows data acceptance when labeled compound recovery is as low as 25%, the estimated detection limit was adjusted by the laboratory to account for the worst-case recovery. Thus, 3.3 ppq was divided by 0.25, and a worst-case estimated detection limit was calculated as 13.2 ppq.

2. Spike Levels

The **Federal Register** specifies that each of the replicates be spiked with each analyte to yield a concentration between one and five times the estimated detection limit. The laboratory chose to use spike solutions containing approximately twice the estimated detection limit of 13.2 ppq. Thus, the 2,3,7,8-TCDD and 2,3,7,8-TCDF isomers were both spiked at 25 ppq.

3. MDL Study Conclusions

Analytical results of the MDL study are summarized in "Summary Report, USEPA ITD, Method Detection Limit Study for Method 1613 Determination of 2,3,7,8-TCDD and 2,3,7,8-TCDF", USEPA, OWRS, ITD, May 1990.

The MDL value for 2,3,7,8-TCDD from this single laboratory study was 5.6 ppq. The MDL for 2,3,7,8-TCDF was 1.7 ppq. These values are 1.8 and 5.8 times lower than the respective Minimum Levels specified in Method 1613 for these two isomers, and indicate that the method is capable of determining 2,3,7,8-TCDD and 2,3,7,8-TCDF at the Minimum Level.

The MDL values for 10 of the other 15 isomers follow a similar pattern, with the dioxin isomers having slightly higher MDLs than the corresponding furans. The MDL values of these 10 isomers are all (2—5x) below the specified Minimum Levels, and indicate the ability of Method 1613 to determine these analytes at the specified Minimum Levels.

The exceptions are the OCDD, OCDF, 1,2,3,4,6,7,8-HpCDD, 1,2,3,4,6,7,8-HpCDF, and 1,2,3,6,7,8-HxCDD isomers. The MDL values of these 5 isomers were significantly higher (5—100 ×) than the other MDL values. However, these MDLs were all skewed by the inordinately high concentrations of these five isomers in two of the eight samples. None of these isomers were detected at significant levels in the method blank associated with all eight samples, however, the concentrations appear to be the result of either laboratory contamination or incorrect spiking of these two samples. No attempt was made to correct the MDL values for these outlier concentrations.

V. Precision and Recovery of the Proposed Test Method

As part of the method's ongoing QA/QC requirements and ITD's QA/QC program, ITD and each laboratory performing method 1613 routinely collect data on method performance in various reference matrices (see § 8.6 of the method). Additional method performance data have been collected by ITD during 1989 industry studies on effluent and sludge samples from the pulp and paper, petroleum refining, Superfund dischargers, and pesticides industries.

Prior to sample analysis using Method 1613, a laboratory must complete the start-up tests (Initial Precision and Recovery, Method § 8.2). The laboratory must also analyze an ongoing precision and recovery aliquot (Method § 14.5) with each sample set. The results of these analyses must display acceptable precision and recovery, as defined in the method.

ITD has compiled the initial precision and recovery (IPR) data and ongoing precision and recovery (OPR) data from all the laboratories that have performed analyses using this method under contract to ITD (see Performance Evaluation of Method 1613, OWRS, ITD, March 1990). An evaluation of over 60 IPR and OPR analyses indicates that all the laboratories are able to achieve acceptable recoveries of the unlabeled and labeled compounds spiked into the reference matrices. For 2,3,7,8-TCDD, the mean IPR recovery across all labs was 88.5%. The mean IPR recoveries of all other unlabeled compounds were even higher. The mean recovery of OCDD was above 100% due to the great difficulty in eliminating background levels of this compound. The data have not been adjusted for the levels of OCDD found in the blanks. The standard deviation of the unlabeled compound recoveries are also relatively low. No unlabeled compound had a standard deviation across all labs of greater than 20%.

The evaluation of the ongoing precision and recovery data indicates similar trends. The unlabeled compound recoveries were all above 90%, and the labeled compound recoveries were greater than 50%.

Isotope dilution quantification provides significant improvements in analytical precision. Despite losses of some labeled compounds as high as 50% during the extract cleanup, the precision of the results for the unlabeled compounds, measured as the standard deviation of the recoveries, is considerably better than for the two unlabeled compounds quantified by internal standard techniques.

Based on results of analysis of 500 samples, performance data show that the recoveries of labeled compounds from field samples were well within the method specifications (25 to 150%) for all but a few samples. These few samples were generally in-process wastewaters or product samples such as a depentanized petroleum reformate. The recoveries from solid samples were slightly higher than for aqueous samples from the same industrial categories.

The data collected by ITD demonstrate that the method is sufficiently reliable to be used by a variety of laboratories. The precision and recovery of the method meet the needs of the Agency for a compliance monitoring and survey method for dioxins and furans. Specifically, the precision and recovery profiles are well within the range of current part 136 methods and similar to the existing part 136 method for dioxin. The method contains an extensive QA/QC program that allows the data user to evaluate the quality of individual sample results. This QA/QC program was built into the method from the start, not simply added on to an existing method. The benefits of this approach were evident during the development of the final method, where data on labeled compound recoveries were instrumental in evaluating various sample extraction and clean up procedures.

VI. Regulatory Requirements

A. Executive Order 12291

This rule is associated with no increase in reporting or recordkeeping burden to respondents as covered under the provisions of the Paperwork Reduction Act, 35 U.S.C. 3501 *et. seq.* The rule describes a test method but does not place any additional information reporting or recordkeeping burden on respondents.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, requires a regulatory impact analysis study. This regulation is not major for the following reasons:

1. It only prescribes an analytical method that ensures a uniform measure of pollutants across all wastewater discharges within minimum acceptance criteria. It does not require that analyses actually be performed. (Other existing rules require such analyses.) The purpose is to ensure that the quality of the environmental monitoring data meets certain minimum standards.

2. The impact of this regulation will be far less than $100 million. The regulation affects unit monitoring cost for the NPDES programs, e.g., effluent guidelines regulations and the NPDES implementation regulations, and the pretreatment programs. However, this rule does not itself impose those costs. The monitoring costs for other programs are considered in the rule-making for each program.

3. This regulation will potentially affect all NPDES permittees and will not be concentrated on any particular sectors of American industry, and will not be significant. Accordingly, there will be no significant adverse affects on competition, employment, investment, productivity, innovation, or on the ability of the U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action will be submitted to OMB for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*), EPA is required to determine if a regulation will significantly affect a substantial number of small entities and, therefore, require a regulatory analysis. This amendment will not have a significant economic impact on a substantial number of small facilities. This regulation simply approves an analytical technique to be available for use by all laboratories.

C. Paperwork Reduction Act

This rule contains no requests for information and is, therefore, exempt from the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

VII. Public Docket

All of the documents listed below are available only for public inspection and copying at room M2904, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC from 8 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The documents are also available for inspection and copying at the Office of the Director, Environmental Monitoring Systems Laboratory—Cincinnati, at the Andrew W. Breidenbach Environmental Research Center, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The EPA information regulation (40 CFR part 2) allows the Agency to charge a reasonable fee for copying.

List of Items in Docket

"Method 1613: Tetra- through Octa-Chlorinated Dioxins and Furans by Isotope Dilution HRGC/HRMS", USEPA, Office of Water Regulations and Standards (OWRS), Industrial Technology Division (ITD), Revision A, April 1990.

"Performance Evaluation of Method 1613", USEPA, OWRS, ITD, March 1990.

"Summary Report, USEPA ITD, Method Detection Limit Study for Method 1613 Determination of 2,3,7,8-TCDD and 2,3,7,8-TCDF", USEPA, OWRS, ITD, May 1990.

"Study Plan for the Evaluation of Method 1613", USEPA, OWRS, ITD, May 1990.

VIII. Materials Proposed for Incorporation by Reference Into 40 CFR Part 136

1. Tondeur, Yves, "Method 8290: Analytical Procedures and Quality Assurance for Multimedia Analysis of Polychlorinated Dibenzo-p-dioxins and Dibenzofurans by High-Resolution Gas Chromatography/High-Resolution Mass Spectrometry", USEPA, Environmental Monitoring Systems Laboratory, Las Vegas, Nevada, June 1987.

2. "Measurement of 2,3,7,8-tetrachlorinated Dibenzo-p-dioxin (TCDD) and 2,3,7,8-Tetrachlorinated Dibenzofuran (TCDF) in Pulp, Sludges, Process Samples and Wastewaters from Pulp and Paper Mills," Wright State University, Dayton, Ohio 45435, June 1988.

3. "NCASI Procedures for the Preparation and Isomer Specific Analysis of Pulp and Paper Industry Samples for 2,3,7,8-TCDD and 2,3,7,8-TCDF", National Council of the Paper Industry for Air and Stream Improvement, 260 Madison Ave., New York, New York 10016, Technical Bulletin No. 551, May 1989.

4. "Analytical Procedures and Quality Assurance Plan for the Determination of PCDD/PCDF in Fish", U.S. Environmental Protection Agency, Environmental Research Laboratory, 6201 Congdon Blvd., Duluth, Minnesota 55804, April 1988.

5. Lamparski, L.L., and Nestrick, T.J., "Determination of Tetra-, Hexa-, Hepta-, and Octachlorodibenzo-p-dioxin Isomers in Particulate Samples at Parts per Trillion Levels", *Analytical Chemistry*, 52: 2045–2054 (1980).

6. Lamparski, L.L., and Nestrick, T.J., "Novel Extraction Device for the Determination of Chlorinated Dibenzo-p-dioxins (PCDDs) and Dibenzofurans (PCDFs) in Matrices Containing Water", *Chemosphere*, 19: 27–31, 1989.

7. Patterson, D.G., et. al. "Control of Interferences in the Analysis of Human Adipose Tissue for 2,3,7,8-Tetrachlorodibenzo-p-dioxin", *Environmental Toxicological Chemistry*, 5: 355–360, 1986.

8. Stanley, John S., and Sack, Thomas M., "Protocol for the Analysis of 2,3,7,8-Tetrachlorodibenzo-p-dioxin by High-Resolution Gas Chromatography/High-Resolution Mass Spectrometry", USEPA, Environmental Monitoring Systems Laboratory, Las Vegas, Nevada 89114, EPA 600/4–86–004, January 1986.

9. "Method 613—2,3,7,8-Tetrachlorodibenzo-p-dioxin", 40 CFR part 136 (49 FR 43234), October 26, 1984, Section 4.1.

10. Provost, L.P., and Elder, R.S., "Interpretation of Percent Recovery Data", *American Laboratory*, 15: 56–83, 1983.

IX. Request for Comments

The USEPA requests public analysis, comments, and information on all aspects of this proposal.

List of Subjects in 40 CFR Part 136

Reporting and recordkeeping requirements, Water pollution control.

Dated: December 31, 1990.

F. Henry Habicht II,

Acting Administrator.

In consideration of the preceding, USEPA proposes to amend 40 CFR part 136 as follows:

1. The authority citation of 40 CFR part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Pub. L. 95–217, Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987), 33 U.S.C. 1314 and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 92–217; Stat. 7, Pub. L. 100–4 (The "Act").

PART 136—[AMENDED]

1. In § 136.3(a), Table IC—List of Approved Test Procedures for Non-Pesticide Organic Compounds, is amended by revising the entry for 2,3,7,8-Tetrachlorodibenzo-p-dioxin, by adding entries for sixteen additional dioxin and furan compounds, and by revising Table IC Notes [2] and [7], as follows:

§ 136.3 Identification of test procedures.

* * * * *

TABLE IC—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS

Parameter [1]	EPA method number [2,7]			
	GC	GC/MS	HPLC	Other
* * * * * *		*		
(Revise the following entry.)				
87. 2,3,7,8-Tetrachlorodibenzo-*p*-dioxin		[5a] 613, 1613		
(Add the following entries.)				
____ 1,2,3,4,6,7,8-Heptachlorodibenzo-*p*-dioxin		1613		
____ 1,2,3,4,6,7,8-Heptachlorodibenzofuran		1613		
____ 1,2,3,4,7,8,9-Heptachlorodibenzofuran		1613		
____ 1,2,3,4,7,8-Hexachlorodibenzo-*p*-dioxin		1613		
____ 1,2,3,6,7,8-Hexachlorodibenzo-*p*-dioxin		1613		
____ 1,2,3,7,8,9-Hexachlorodibenzo-*p*-dioxin		1613		
____ 1,2,3,4,7,8-Hexachlorodibenzofuran		1613		
____ 1,2,3,6,7,8-Hexachlorodibenzofuran		1613		
____ 1,2,3,7,8,9-Hexachlorodibenzofuran		1613		
____ 2,3,4,6,7,8-Hexachlorodibenzofuran		1613		
____ Octachlorodibenzo-*p*-dioxin		1613		
____ Octachlorodibenzofuran		1613		
____ 1,2,3,7,8-Pentachlorodibenzo-*p*-dioxin		1613		
____ 1,2,3,7,8-Pentachlorodibenzofuran		1613		
____ 2,3,4,7,8-Pentachlorodibenzofuran		1613		
____ 2,3,7,8-Tetrachlorodibenzofuran		1613		
* * * * * *		*		

[1] All parameters are expressed in micrograms per liter (μg/L).

[2] The full text of Methods 601–613, 624, 625, 1613, 1624, and 1625, are given at Appendix A, "Test Procedures for Analysis of Organic Pollutants," of this part 136. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at Appendix B, "Definition and Procedure for the Determination of the Method Detection Limit," of this part 136.

* * * * *

[5a] 625, Screening only.

* * * * *

[7] Each analyst must make an initial, one-time, demonstration of their ability to generate acceptable precision and accuracy with Methods 601–613, 624, 625, 1613, 1624, and 1625 (See appendix A of this part 136) in accordance with procedures each in section 8.2 of each of these Methods. Additionally, each laboratory, on an on-going bases, must spike and analyze 10% (5% for Methods 624 and 625, and 100% for Methods 1613, 1624, and 1625) of all samples to monitor and evaluate laboratory data quality in accordance with sections 8.3 and 8.4 of these Methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect and cannot be reported to demonstrate regulatory compliance.

Note: These warning limits are promulgated as an "interim final action with a request for comments."

* * * * *

2. In § 136.3(b), the listing entitled References, Sources, Costs, and Table Citations is amended by revising paragraph (1) to read as follows.

§ 136.3 Identification of test procedures.

* * * * *

References, Sources, Costs, and Table Citations

(1) The full texts of Methods 601–613, 624, 625, 1613, 1624 and 1625 are printed in appendix A of this part 136. The full text for determining the method detection limit when using the test procedures is given in appendix B of this part 136. The full text of Method 200.7 is printed in appendix C of this Part 136.

Cited in: Table IB, Note 4; Table IC, Note 2; and Table ID, Note 2.

* * * * *

3. In § 136.3(e), Table II—Required Containers, Preservation, Techniques, and Holding Times, under Table IC-Organic Tests, is amended by revising the entry for TCDD to read as follows:

§ 136.3 Identification of test procedures.

* * * * *

TABLE II—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES

Parameter No./name	Container [1]	Preservation [2, 3]	Maximum holding time [4]
* * * * * * *			
Table IC—Organic Tests: [8]			
* * * * * * *			
87, (*list numbers assigned to 16 dioxin and furan compounds being added*). Chlorinated Dioxins and Furans.	do	Cool, 4°C, 0.008% $NA_2S_2O_3$ [5]	Do.
* * * * * * *			

[1] Polyethylene (P) or Glass (G).

[2] Sample preservation should be performed immediately upon sample collection. For composite chemical samples each aliquot should be preserved at the time of collection. When use of an automated sampler makes it impossible to preserve each aliquot, then chemical samples may be preserved by maintaining at 4°C until compositing and sample splitting is completed.

[3] When any sample is to be shipped by common carrier or sent through the United States Mails, it must comply with the Department of Transportation Hazardous Materials Regulations (49 CFR part 172). The person offering such material for transportation is responsible for ensuring such compliance. For the preservation requirements of Table II, the Office of Hazardous Materials Transportation Bureau, Department of Transportation has determined that the Hazardous Materials Regulations do not apply to the following materials: Hydrochloric acid (HCl) in water solutions at concentrations of 0.04% by weight or less (pH about 1.96 or greater); Nitric acid (HNO_3) in water solutions at concentrations of 0.15% by weight or less (pH about 1.62 or greater); Sulfuric acid (H_2SO_4) in water solutions at concentrations of 0.35% by weight or less (pH about 1.15 or greater); and Sodium hydroxide (NaOH) in water solutions at concentrations of 0.080% by weight or less (pH about 12.30 or less).

[4] Samples should be analyzed as soon as possible after collection. The times listed are the maximum times that samples may be held before analysis and still be considered valid. Samples may be held for longer periods only if the permittee, or monitoring laboratory, has data on file to show that the specific types of samples under study are stable for the longer time, and has received a variance from the Regional Administrator under § 136.3(e). Some samples may not be stable for the maximum time period given in the table. A permittee, or monitoring laboratory, is obligated to hold the sample for a shorter time if knowledge exists to show that this is necessary to maintain sample stability. See § 136.3(e) for details.

[5] Should only be used in the presence of residual chlorine.

* * *

[8] Guidance applies to samples to be analyzed by GC, LC, or GC/MS for specific compounds.

* * * * *

4. In part 136, appendix A is amended by adding Method 1613 to read as follows:

Appendix A to Part 136—Methods for Organic Chemical Analysis of Municipal and Industrial Wastewater

* * * * *

Method 1613 Revision A—Tetra-through Octa- Chlorinated Dioxins and Furans by Isotope Dilution HRGC/HRMS

1. *Scope and Application*

1.1 This method is designed to meet the survey requirements of USEPA ITD. The method is used to determine the tetra-through octa- chlorinated dibenzo-*p*-dioxins and dibenzofurans associated with the Clean Water Act (as amended 1987); the Resource Conservation and Recovery Act (as amended 1986); and the Comprehensive Environmental Response, Compensation and Liability Act (as amended 1986); and other dioxin and furan compounds amenable to high resolution capillary column gas chromatography (HRGC)/high resolution mass spectrometry (HRMS). Specificity is provided for determination of the 17 2,3,7,8-substituted polychlorinated dibenzo-*p*-dioxins (PCDD) and polychlorinated dibenzofurans (PCDF).

1.2 The method is based on EPA, industry, commercial laboratory, and academic methods (References 1–6).

1.3 The compounds listed in Table 1 may be determined in waters, soils, sludges, and other matrices by this method.

1.4 The detection limits of the method are usually dependent on the level of interferences rather than instrumental limitations. The levels in Table 2 typify the minimum quantities that can be determined in environmental samples using the method.

1.5 The GCMS portions of the method are for use only by analysts experienced with HRGC/HRMS or under the close supervision of such qualified persons. Each laboratory that uses this method must demonstrate the ability to generate acceptable results using the procedure in Section 8.2.

2. *Summary of Method*

2.1 Stable isotopically labeled analogs of 15 of the PCDDs and PCDFs are added to each sample prior to extraction. Samples containing coarse solids are prepared for extraction by grinding or homogenization. Water samples are filtered and then extracted with methylene chloride using separatory funnel procedures; the particulates from the water samples, soils, and other finely divided solids are extracted using a combined Soxhlet extraction/Dean-Stark azeotropic distillation (Reference 7). Prior to cleanup and analysis the extracts of the filtered water and the particulates are combined.

2.2 After extraction, $^{37}Cl_4$-labeled 2,3,7,8-TCDD is added to each extract to measure the efficiency of the cleanup process. Samples cleanup may include back extraction with acid and/or base, and gel permeation, alumina, silica gel, and activated carbon chromatography. High performance liquid chromatography (HPLC) can be used for further isolation of the 2,3,7,9-isomers or other specific isomers or congeners.

2.3 After cleanup, the extract is concentrated to near dryness. Immediately prior to injection, two internal standards are added to each extract, and a 1 uL aliquot of the extract is injected into the gas

chromatograph. The analytes are separated by the GC and detected by a high resolution (>10,000) mass spectrometer. Two exact masses (m/z's) are monitored for each analyte. The isotopically labeled compounds serve to correct for the variability of the analytical technique.

2.4 Dioxins and furans are identified by comparing GC retention times and the ion abundance ratios of the m/z's with the corresponding retention time ranges of authentic standards and the theoretical ion abundance ratios of the exact m/z's. Isomers and congeners are identified when the retention times and m/z abundance ratios agree within pre-defined limits. By using a GC column or columns capable of resolving the 2,3,7,8-substituted isomers from all other tetra-isomers, the 2,3,7,8-substituted isomers are identified when the retention time and m/z abundance ratios agree within pre-defined limits of the retention times and exact m/z ratios of authentic standards.

2.5 Quantitative analysis is performed by GCMS using selected ion current profile (SICP) areas, in one of two ways.

2.5.1 For the 15 2,3,7,8-substituted isomers for which labeled analogs are available (see Table 1), the GCMS system is calibrated and the compound concentration is determined using an isotope dilution technique. Although a labeled analog of the octachlorinated dibenzofuran (OCDF) is available, using high resolution mass spectrometry it produces an m/z that may interfere with the identification and quantitation of the unlabeled octachlorinated dibenzo-*p*-dioxin (OCDD). Therefore, this labeled analog has not been included in the calibration standards, and the unlabeled OCDF is quantitated against the labeled OCDD. Because the labeled analog of 1,2,3,7,8,9-HxCDD is used as an internal standard (i.e., not added before extraction of the sample), it cannot be used to quantitate the unlabeled compound by strict isotope dilution procedures, Therefore, the unlabeled 1,2,3,7,89-HxCDD is quantitated using the average of the responses of the labeled analogs of the other two 2,3,7,8-substituted HxCDD's, 1,2,3,4,7,8-HxCDD and 1,2,3,6,7,8-HxCDD. As a result, the concentration of the unlabeled 1,2,3,7,8,9-HxCDD is corrected for the average recovery of the other two HxCDD's.

2.5.2 For non-2,3,7,8-substituted isomers and the total concentrations of all isomers within a level of chlorination (i.e., total TCDD), concentrations are determined using response factors from the calibration of labeled analogs at the same level of chlorination.

2.6 The quality of the analysis is assured through reproducible calibration and testing of the extraction, cleanup, and GCMS systems.

3 *Contamination and Interferences*

3.1 Solvents, reagents, glassware, and other sample processing hardware may yield artifacts and/or elevated baselines causing misinterpretation of chromatograms (References 8–9). Specific selection of reagents and purification of solvents by distillation in all-glass systems may be required. Where possible, reagents are cleaned by extraction or solvent rinse.

3.2 Proper cleaning of glassware is extremely important because glassware may not only contaminate the samples, but may also remove the analytes of interest by adsorption on the glass surface.

3.2.1 Glassware should be rinsed with solvent and washed with a detergent solution as soon after use as is practical. Sonication of glassware containing a detergent solution for approximately 30 seconds may aid in cleaning. Glassware with removable parts, particularly separatory funnels with teflon stopcocks, must be disassembled prior to detergent washing.

3.2.2 After detergent washing, glassware should be immediately rinsed first with methanol, then with hot tap water. The tap water rinse is followed by another methanol rinse, then acetone, and then methylene chloride.

3.2.3 Do not bake reusable glassware in an oven as a routine part of cleaning. Baking may be warranted after particularly dirty samples are encountered, but should be minimized, as repeated baking of glassware may cause active sites on the glass surface that will irreversibly adsorb PCDDs/PCDFs.

3.2.4 Immediately prior to use, Soxhlet extraction glassware should be pre-extracted with toluene for approximately 3 hours. See Section 11.1.2.3. Separatory funnels should be shaken with methylene chloride/toluene (80/20 mixture) for 2 minutes, drained, and then shaken with pure methylene chloride for 2 minutes.

3.3 All materials used in the analysis shall be demonstrated to be free from interferences by running reference matrix blanks initially and with each sample set (samples started through the extraction process on a given 12-hour shift, to a maximum of 20 samples). The reference matrix blank must simulate, as closely as possible, the sample matrix under test. Reagent water (Section 6.6.1) is used to simulate water samples; playground sand (Section 6.6.2) or white quartz sand (Section 6.3.2) can be used to simulate soils; filter paper (Section 6.6.3) is used to simulate papers and similar materials; other materials (Section 6.6.4) can be used to simulate other matrices.

3.4 Interferences coextracted from samples will vary considerably from source to source, depending on the diversity of the site being sampled. Interfering compounds may be present at concentrations several orders of magnitude higher than the PCDDs and PDCFs. The most frequently encountered interferences are chlorinated biphenyls, methoxy biphenyls, hydroxydiphenyl ethers, benzylphenyl ethers, polynuclear aromatics, and pesticides. Because very low levels of PCDDs and PCDFs are measured by this method, the elimination of interferences is essential. The cleanup steps given in Section 12 can be used to reduce or eliminate these interferences and thereby permit reliable determination of the PCDDs and PCDFs at the levels shown in Table 2.

3.5 Each piece of reusable glassware should be numbered in such a fashion that the laboratory can associate all reusable glassware with the processing of a particular sample. This will assist the laboratory in: (1) Tracking down possible sources of contamination for individual samples, (2) identifying glassware associated with highly contaminated samples that may require extra cleaning, and (3) determining when glassware should be discarded.

4. *Safety*

4.1 The toxicity or carcinogenicity of each compound or reagent used in this method has not been precisely determined; however, each chemical compound should be treated as a potential health hazard. Exposure to these compounds should be reduced to the lowest possible level.

4.1.1 The 2,3,7,8-TCDD isomer has been found to be acnegenic, carcinogenic, and teratogenic in laboratory animal studies. It is soluble in water to approximately 200 ppt and in organic solvents to 0.14 percent. On the basis of the available toxicological and physical properties of 2,3,7,8-TCDD, all of the PCDDs and PCDFs should be handled only by highly trained personnel thoroughly familiar with handling and cautionary procedures, and who understand the associated risks.

4.1.2 It is recommended that the laboratory purchase dilute standard solutions of the analytes in this method. However, if primary solutions are prepared, they shall be prepared in a hood, and a NIOSH/MESA approved toxic gas respirator shall be worn when high concentrations are handled.

4.2 The laboratory is responsible for maintaining a current awareness file of OSHA regulations regarding the safe handling of the chemicals specified in this method. A reference file of data handling sheets should also be made available to all personnel involved in these analyses. Additional information on laboratory safety can be found in References 10–13. The references and bibliography at the end of Reference 13 are particularly comprehensive in dealing with the general subject of laboratory safety.

4.3 The PCDDs and PCDFs and samples suspected to contain these compounds are handled using essentially the same techniques employed in handling radioactive or infectious materials. Well-ventilated, controlled access laboratories are required. Assistance in evaluating the health hazards of particular laboratory conditions may be obtained from certain consulting laboratories and from State Departments of Health or Labor, many of which have an industrial health service. The PCDDs and PCDFs are extremely toxic to laboratory animals. Each laboratory must develop a strict safety program for handling the PCDDs and PCDFs. The following practices are recommended (References 2 and 14).

4.3.1 Facility—When finely divided samples (dusts, soils, dry chemicals) are handled, all operations (including removal of samples from sample containers, weighing, transferring, and mixing), should be performed in a glove box demonstrated to be leak tight or in a fume hood demonstrated to have adequate air flow. Gross losses to the laboratory ventilation system must not be allowed. Handling of the dilute solutions normally used in analytical and animal work presents no inhalation hazards except in the case of an accident.

4.3.2 Protective equipment—Throwaway plastic gloves, apron or lab coat, safety glasses or mask, and a glove box or fume hood adequate for radioactive work should

be utilized. During analytical operations which may give rise to aerosols or dusts, personnel should wear respirators equipped with activated carbon filters. Eye protection equipment (preferably full face shields) must be worn while working with exposed samples or pure analytical standards. Latex gloves are commonly used to reduce exposure of the hands. When handling samples suspected or known to contain high concentrations of the PCDDs or PCDFs, an additional set of gloves can also be worn beneath the latex gloves.

4.3.3 Training—Workers must be trained in the proper method of removing contaminated gloves and clothing without contacting the exterior surfaces.

4.3.4 Personal hygiene—thorough washing of hands and forearms after each manipulation and before breaks (coffee, lunch, and shift).

4.3.5 Confinement—isolated work area, posted with signs, segregated glassware and tools, plastic absorbent paper on bench tops.

4.3.6 Effluent vapors—Effluents of sample splitters for the gas chromatograph and roughing pumps on the GC/MS should pass through either a column of activated charcoal or be bubbled through a trap containing oil or high-boiling alcohols.

4.3.7 Waste Handling and Disposal

4.3.7.1 Handling—Good technique includes minimizing contaminated waste. Plastic bag liners should be used in waste cans. Janitors and other personnel must be trained in the safe handling of waste.

4.3.7.2 Disposal

4.3.7.2.1 The PCDDs and PCDFs decompose above 800 °C. Low-level waste such as absorbent paper, tissues, animal remains, and plastic gloves may be burned in an appropriate incinerator. Gross quantities (milligrams) should be packaged securely and disposed through commercial or governmental channels which are capable of handling extremely toxic wastes.

4.3.7.2.2 Liquid soluble waste should be dissolved in methanol or ethanol and irradiated with ultraviolet light with a wavelength greater than 290 nm for several days. (Use F 40 BL lamps or equivalent.) Analyze liquid wastes and dispose of the solution when the PCDDs and PCDFs can no longer be detected.

4.3.8 Decontamination

4.3.8.1 Personal decontamination—Use any mild soap with plenty of scrubbing action.

4.3.8.2 Glassware, tools, and surfaces—Chlorothene NU Solvent (Trademark of the Dow Chemical Company) is the least toxic solvent shown to be effective. Satisfactory cleaning may be accomplished by rinsing with Chlorothene, then washing with any detergent and water. If glassware is first rinsed with solvent, then the dish water may be disposed of in the sewer. Given the cost of disposal, it is prudent to minimize solvent wastes.

4.3.9 Laundry—Clothing known to be contaminated should be collected in plastic bags. Persons who convey the bags and launder the clothing should be advised of the hazard and trained in proper handling. The clothing may be put into a washer without contact if the launderer knows of the potential problem. The washer should be run through a cycle before being used again for other clothing.

4.3.10 Wipe tests—A useful method of determining cleanliness of work surfaces and tools is to wipe the surface with a piece of filter paper. Extraction and analysis by GC can achieve a limit of detection of 0.1 ug per wipe. Less than 0.1 ug per wipe indicates acceptable cleanliness; anything higher warrants further cleaning. More than 10 ug on a wipe constitutes an acute hazard and requires prompt cleaning before further use of the equipment or work space, and indicates that unacceptable work practices have been employed.

4.3.11 Accidents—Remove contaminated clothing immediately, taking precautions not to contaminate skin or other articles. Wash exposed skin vigorously and repeatedly until medical attention is obtained.

5. *Apparatus and Materials.*

5.1 Sampling equipment for discrete or composite sampling

5.1.1 Sample bottles and caps

5.1.1.1 Liquid samples (waters, sludges and similar materials containing five percent solids or less)—sample bottle, amber glass, 1.1 L minimum, with screw cap.

5.1.1.2 Solid samples (soils, sediments, sludges, paper pulps, filter cake, compost, and similar materials that contain more than five percent solids)—sample bottle, wide mouth, amber glass, 500 mL minimum.

5.1.1.3 If amber bottles are not available, samples shall be protected from light.

5.1.1.4 Bottle caps—threaded to fit sample bottles. Caps shall be lined with Teflon.

5.1.1.5 Cleaning.

5.1.1.5.1 Bottles are detergent water washed, then solvent rinsed before use.

5.1.1.5.2 Liners are detergent water washed, then rinsed with reagent water (Section 6.6.1) and then solvent, and baked at approximately 200°C for one hour minimum, prior to use.

5.1.2 Compositing equipment—automatic or manual compositing system incorporating glass containers cleaned per bottle cleaning procedure above. Glass or Teflon tubing only shall be used. If the sampler uses a peristaltic pump, a minimum length of compressible silicone rubber tubing may be used in the pump only. Before use, the tubing shall be thoroughly rinsed with methanol, followed by repeated rinsings with reagent water to minimize sample contamination. An integrating flow meter is used to collect proportional composite samples.

5.2 Equipment for glassware cleaning

5.2.1 Laboratory sink with overhead fume hood

5.3 Equipment for sample preparation

5.3.1 Laboratory fume hood of sufficient size to contain the sample preparation equipment listed below.

5.3.2 Glove box (optional)

5.3.3 Tissue homogenizer—VirTis Model 45 Macro homogenizer (American Scientific Products H–3515, or equivalent) with stainless steel Macro-shaft and Turbo-shear blade.

5.3.4 Meat grinder—Hobart, or equivalent, with 3–5 mm holes in inner plate.

5.3.5 Equipment for determining percent moisture

5.3.5.1 Oven, capable of maintaining a temperature of 110 ±5°C.

5.3.5.2 Dessicator.

5.3.6 Balances.

5.3.6.1 Analytical—capable of weighing 0.1 mg.

5.3.6.2 Top loading—capable of weighing 10 mg.

5.4 Extraction apparatus.

5.4.1 Water samples.

5.4.1.1 pH meter, with combination glass electrode.

5.4.1.2 pH paper, wide range (Hydrion Papers, or equivalent).

5.4.1.3 Graduated cylinder, 1 L capacity.

5.4.1.4 1 L filtration flasks with side arm, for use in vacuum filtration of water samples.

5.4.1.5 Separatory funnels—250, 500, and 2000 mL, with Teflon stopcocks.

5.4.2 Soxhlex/Dean-Stark (SDS) extractor (Figure 1).

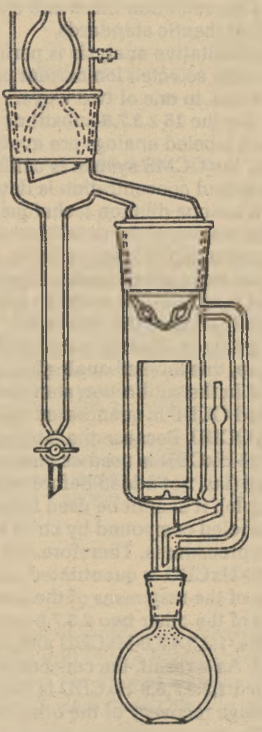

FIGURE 1 Soxhlet/Dean-Stark Extractor

5.4.2.1 Soxhlet—50 mm i.d., 220 mL capacity with 500 mL flask (Cal-Glass LG–6900, or equivalent, except substitute 500 mL round bottom flask for 300 mL flat bottom flask).

5.4.2.2 Thimble—43 × 123 to fit Soxhlet (Cal-Glass LG–6901–122, or equivalent).

5.4.2.3 Moisture trap—Dean Stark or Barret with Teflon stopcock, to fit Soxhlet.

5.4.2.4 Heating mantle—hemispherical, to fit 500 mL round bottom flask (Cal-Glass LG–8801–112, or equivalent).

5.4.2.5 Variable transformer—Powerstate (or equivalent), 110 volt, 10 amp.

5.4.3 Beakers, 400–500 mL.

5.4.4 Spatulas—stainless steel.

5.5 Filtration appartus.

5.5.1 Pyrex glass wool—solvent-extracted by SDS for three hours minimum. (Note: Baking glass wool may cause active sites that will irreversibly adsorb PCDDs/PCDFs.)

5.5.2 Glass funnel—125–250 mL.

5.5.3 Glass fiber filter paper (Whatman GF/D, or equivalent).

5.5.4 Drying column—15 to 20 mm i.d. Pyrex chromatographic column equipped with coarse glass frit or glass wool plug.

5.5.5 Buchner funnel, 15 cm.

5.5.6 Glass fiber filter paper for above.

5.5.7 Pressure filtration apparatus—Millipore YT30 142 HW, or equivalent.

5.6 Centrifuge apparatus.

5.6.1 Centrifuge—capable of rotating 500 mL centrifuge bottles or 15 mL centrifuge tubes at 5,000 rpm minimum.

5.6.2 Centrifuge bottles—500 mL, with screw caps, to fit centrifuge.

5.6.3 Centrifuge tubes—12–15 mL, with screw caps, to fit centrifuge.

5.7 Cleanup apparatus.

5.7.1 Automated gel permeation chromatograph (Analytical Biochemical Labs, Inc, Columbia, MO, Model GPC Autoprep 1002, or equivalent).

5.7.1.1 Column—600–700 mm × 25 mm i.d., packed with 70 g of SX–3 Bio-beads (Bio-Rad Laboratories, Richmond, CA, or equivalent).

5.7.1.2 Syringe, 10 mL, with Luer fitting.

5.7.1.3 Syringe filter holder, stainless steel, and glass fiber or Teflon filters (Gelman 4310, or equivalent).

5.7.1.4 UV detectors—254–nm, preparative or semi-prep flow cell; (Isco, Inc., Type 6; Schmadzu, 5 mm path length; Beckman-Altex 152W, 8 uL micro-prep flow cell, 2 mm path; Pharmacia UV–1, 3 mm flow cell; LDC Milton-Roy UV–3, monitor #1203; or equivalent).

5.7.2 Reverse phase high performance liquid chromatograph.

5.7.2.1 Column oven and detector—Perkin-Elmer Model LC–65T (or equivalent) operated at 0.02 AUFS at 235 nm.

5.7.2.2 Injector—Rheodyne 7120 (or equivalent) with 50 uL sample loop.

5.7.2.3 Column—two 6.2 × 250 mm Zorbax-ODS columns in series (DuPont Instruments Division, Wilmington, DE, or equivalent), operated at 50 °C with 2.0 mL/min methanol isocratic effluent.

5.7.2.4 Pump—Altex 110A (or equivalent).

5.7.3 Pipets.

5.7.3.1 Disposable, Pasteur, 150 mm × 5 mm i.d. (Fisher Scientific 13–678–6A, or equivalent).

5.7.3.2 Disposable, serological, 10 mL (6 mm i.d.).

5.7.4 Chromatographic columns.

5.7.4.1 150 mm × 8 mm i.d., (Kontes K–420155, or equivalent) with coarse glass frit or glass wool plug and 250 mL reservoir.

5.7.4.2 200 mm × 15 mm i.d., with coarse glass frit or glass wool plug and 250 mL reservoir.

5.7.5 Oven—for storage of adsorbents, capable of maintaining a temperature of 130 ± 5 °C.

5.8 Concentration apparatus.

5.8.1 Rotary evaporator—Buchi/Brinkman-American Scientific No. E5045–10 or equivalent, equipped with a variable temperature water bath.

5.8.1.1 A vacuum source is required for use of the rotary evaporator. It must be equipped with a shutoff valve at the evaporator, and preferably, have a vacuum gauge.

5.8.1.2 A recirculating water pump and chiller are recommended, as use of tap water for cooling the evaporator wastes large volumes of water and can lead to inconsistent performance as water temperatures and pressures vary.

5.8.1.3 Round bottom flasks—100 mL and 500 mL or larger, with ground glass fitting compatible with the rotary evaporator.

5.8.2 Kuderna-Danish (K–D).

5.8.2.1 Concentrator tube—10mL, graduated (Kontes K–570050–1025, or equivalent) with calibration verified. Ground glass stopper (size 19/22 joint) is used to prevent evaporation of extracts.

5.8.2.2 Evaporation flask—500 mL (Kontes K–570001–0500, or equivalent), attached to concentrator tube with springs (Kontes K–662750–0012).

5.8.2.3 Snyder column—three ball macro (Kontes K–503000–0232, or equivalent).

5.8.2.4 Boiling chips.

5.8.2.4.1 Glass or silicon carbide—approx 10/40 mesh, extracted with methylene chloride and baked at 450 °C for one h minimum.

5.8.2.4.2 Teflon (optional)—extracted with methylene chloride.

5.8.2.5 Water bath—heated, with concentric ring cover, capable of maintaining a temperature within +/−2 °C, installed in a fume hood.

5.8.3 Nitrogen blowdown apparatus—equipped with water bath controlled at 35–40 °C (N-Evap, Organomation Associates, Inc., South Berlin, MA, or equivalent), installed in a fume hood.

5.8.4 Sample vials—amber glass, 2–5 mL with Teflon-lined screw cap.

5.9 Gas chromatograph—Shall have splitless or on-column injection port for capillary column, temperature program with isothermal hold, and shall meet all of the performance specifications in Section 7.

5.9.1 GC Column for PCDDs and PCDFs and for isomer specificity for 2,3,7,8-TCDD—60 ± 5 m × 0.32 ± 0.02 mm i.d.; 0.25 um 5% phenyl, 94% methyl, 1% vinyl silicone bonded phase fused silica capillary column (J&W DB–5, or equivalent).

5.9.2 GC Column for isomer specificity for 2,3,7,8-TCDF—30 ± 5 m × 0.32 ± 0.02 mm i.d.; 0.25 um bonded phase fused silica capillary column (J&W DB–225, or equivalent).

5.10 Mass spectrometer—28–40 eV electron impact ionization, shall be capable of repetitively selectively monitoring 12 exact m/z's minimum at high resolution (>10,000) during a period of approximately 1 second, and shall meet all of the performance specifications in Section 7.

5.11 GCMS interface—The mass spectrometer (MS) shall be interfaced to the GC such that the end of the capillary column terminates within 1 cm of the ion source but does not intercept the electron or ion beams.

5.12 Data system—capable of collecting, recording and storing MS data.

6. *Reagents and Standards.*

6.1 pH adjustment and back extraction.

6.1.1 Potassium hydroxide—Dissolve 20 g reagent grade KOH in 100 mL reagent water.

6.1.2 Sulfuric acid—reagent grade (specific gravity 1.84).

6.1.3 Sodium chloride—reagent grade; prepare a five percent (w/v) solution in reagent water.

6.2 Solution drying and evaporation.

6.2.1 Solution drying—sodium sulfate, reagent grade, granular anhydrous (Baker 3375, or equivalent), rinsed with methylene chloride (20 mL/g), baked at 400 °C for one hour minimum, cooled in a dessicator, and stored in a pre-cleaned glass bottle with screw cap that prevents moisture from entering. If after heating the sodium sulfate develops a noticeable grayish cast (due to the presence of carbon in the crystal matrix), that batch of reagent is not suitable for use and shall be discarded. Extraction with methylene chloride (as opposed to simple rinsing) and baking at a lower temperature may produce sodium sulfate that is suitable for use.

6.2.2 Prepurified nitrogen.

6.3 Extraction.

6.3.1 Solvents—acetone, toluene, cyclohexane, hexane, nonane, methanol, methylene chloride, and nonane; distilled-in-glass, pesticide quality, lot certified to be free of interferences.

6.3.2 White quartz sand, 60/70 mesh—for Soxhlet/Dean-Stark extraction, (Aldrich Chemical Co., Milwaukee, WI Cat No. 27,437–9, or equivalent). Bake at 450 °C for four hours minimum.

6.4 GPC calibration solution—solution containing 300 mg/mL corn oil, 15 mg/mL bis(2-ethylhexyl) phthalate, 1.4 mg/mL pentachlorophenol, 0.1 mg/mL perylene, and 0.5 mg/mL sulfur.

6.5 Adsorbents for sample cleanup.

6.5.1 Silica gel.

6.5.1.1 Activated silica gel—Bio-Sil A, 100–200 mesh (Bio-Rad 131–1340, or equivalent), rinsed with methylene chloride, baked at 180 °C for one hour minimum, cooled in a dessicator, and stored in a pre-cleaned glass bottle with screw cap that prevents moisture from entering.

6.5.1.2 Acid silica gel (30 percent w/w)—Thoroughly mix 44.0 g of concentrated sulfuric acid with 100.0 g of activated silica gel in a clean container. Break up aggregates with a stirring rod until a uniform mixture is obtained. Store in a screw-capped bottle with Teflon-lined cap.

6.5.1.3 Basic silica gel—Thoroughly mix 30 g of 1N sodium hydroxide with 100 g of activated silica gel in a clean container. Break up aggregates with a stirring rod until a uniform mixture is obtained. Store in a screw-capped bottle with Teflon-lined cap.

6.5.2 Alumina—Either acid or basic alumina may be used in the cleanup of sample extracts, provided that the laboratory can meet the performance specifications for the recovery of labeled compounds described in section 8.3. The same type of alumina must be used for all samples, including those used to demonstrate initial precision and accuracy (Section 8.2) and ongoing precision and accuracy (Section 14.5).

6.5.2.1 Acid alumina—Bio-Rad Laboratories 132–1340 Acid Alumina AG4 (or

equivalent). Activate by heating to 130 °C for 12 hours minimum.

6.5.2.2 Basic alumina—Bio-Rad Laboratories 132–1240 Basic Alumina AG10 (or equivalent). Activate by heating to 600 °C for 24 hours minimum. Alternatively, activate by heating alumina in a tube furnace at 650–700 °C under an air flow of approximately 400 cc/min. Do not heat over 700 °C, as this can lead to reduced capacity for retaining the analytes. Store at 130 °C in a covered flask. Use within five days of baking.

6.5.3 AX–21/Celite.

6.5.3.1 Activated carbon—AX–21 (Anderson Development Company, Adrian, MI, or equivalent). Prewash with methanol and dry in vacuo at 110 °C.

6.5.3.2 Celite 545—(Supelco 2–0199, or equivalent).

6.5.3.3 Thoroughly mix 5.35 g AX–21 and 62.0 g Celite 545 to produce a 7.9% w/w mixture. Activate the mixture at 130 °C for six hours minimum. Store in a dessicator.

6.6 Reference matrices.

6.6.1 Reagent water—water in which the PCDDs and PCDFs and interfering compounds are not detected by this method.

6.6.2 High solids reference matrix—playground sand or similar material in which the PCDDs and PCDFs and interfering compounds are not detected by this method. May be prepared by extraction with methylene chloride and/or baking at 450 °C for four hours minimum.

6.6.3 Filter paper—Gelman type A (or equivalent) glass fiber paper in which the PCDDs and PCDFs and interfering compounds are not detected by this method. Cut the paper to simulate the surface area of the paper sample being tested.

6.6.4 Other matrices—This method may be verified on any matrix by performing the tests given in Section 8.2. Ideally, the matrix should be free of the PCDDs and PCDFs, but in no case shall the background level of the PCDDs and PCDFs in the reference matrix exceed three times the minimum levels given in Table 2. If low background levels of the PCDDs and PCDFs are present in the reference matrix, the spike level of the analytes used in Section 8.2 should be increased to provide a spike-to-background ratio in the range of 1/1 to 5/1 (Reference 15).

6.7 Standard solutions—purchased as solutions or mixtures with certification to their purity, concentration, and authenticity, or prepared from materials of known purity and composition. If compound purity is 98 percent or greater, the weight may be used without correction to compute the concentration of the standard. When not being used, standards are stored in the dark at room temperature in screw-capped vials with Teflon-lined caps. A mark is placed on the vial at the level of the solution so that solvent evaporation loss can be detected. If solvent loss has occurred, the solution should be replaced.

6.8 Stock solutions.

6.8.1 Preparation—Prepare in nonane per the steps below or purchase as dilute solutions (Cambridge Isotope Laboratories, Cambridge, MA, or equivalent). Observe the safety precautions in section 4, and the recommendation in Section 4.1.2.

6.8.2 Dissolve an appropriate amount of assayed reference material in solvent. For example, weigh 1–2 mg of 2,3,7,8–TCDD to three significant figures in a 10 mL ground glass stoppered volumetric flask and fill to the mark with nonane. After the TCDD is completely dissolved, transfer the solution to a clean 15 mL vial with Teflon-lined cap.

6.8.3 Stock standard solutions should be checked for signs of degradation prior to the preparation of calibration or performance test standards. Reference standards that can be used to determine the accuracy of calibration standards are available from Cambridge Isotope Laboratories.

6.9 Secondary standard—Using stock solutions (Section 6.8), prepare secondary standard solutions containing the compounds and concentrations shown in Table 4 in the nonane.

6.10 Labeled compound stock standard—From stock standard solutions prepared as above, or from purchased mixtures, prepare this standard to contain the labeled compounds at the concentrations shown in Table 4 in nonane. This solution is diluted with acetone prior to use (Section 10.3.2.).

6.11 Clean standard—Prepare $^{37}Cl_4$-2,3,7,8-TCDD at the concentration shown in Table 4 in nonane.

6.12 Internal standard—Prepare at the concentration shown in Table 4 in nonane.

6.13 Calibration standards (CS1 through CS5)—Combine the solutions in Sections 6.9, 6.10, 6.11, and 6.12 to produce the five calibration solutions shown in Table 4 in nonane. These solutions permit the relative response (labeled to unlabeled) and response factor to be measured as a function of concentration. The CS3 standard is used for calibration verification (VER).

6.14 Precision and recovery standard (PAR)—used for determination of initial (Section 8.2) and ongoing (Section 14.5) precision and accuracy. This solution contains the analystes and labeled compounds at the concentrations listed in Table 4 in nonane. This solution is diluted with acetone prior to use (Section 10.3.4).

6.15 GC retention time window defining solutions—used to define the beginning and ending retention times for the dioxin and furan isomers.

6.15.1 DB–5 column window defining standards—Cambridge Isotope Laboratories ED–1732–A (dioxins) and ED–1731–A (furans), or equivalent, containing the compounds listed in Table 5.

6.16 Isomer specificity test standards—used to demonstrate isomer specificity for the 2,3,7,8-tetraisomers of dioxin and furan.

6.16.1 Standards for the DB–5 column—Cambridge Isotope Laboratories ED–908, ED–908–C, or ED–935, or equivalent, containing the compounds listed in Table 5.

6.16.2 Standards for the DB–225 column—Cambridge Isotope Laboratories EF–937 or EF–938, or equivalent, containing the compounds listed in Table 5.

6.17 Stability of solutions—Standard solutions used for quantitative purposes (Sections 6.9–6.14) shall be analyzed within 48 hours of preparation and on a monthly basis thereafter for signs of degradation. Standards will remain acceptable if the peak area at the quantitation m/z remains within ±15 percent of the area obtained in the initial analysis of the standard. Any standards failing to meet this criterion should be assayed against reference standards, as in Section 6.8.3, before further use.

7. Calibration

7.1 Assemble the GCMS and establish the operating conditions necessary to meet the relative retention time specifications in Table 2.

7.1.1 The following GC operating conditions may be used for guidance and adjusted as needed to meet the relative retention time specifications in Table 2:

Injector temp: 270 °C
Interface temp: 290 °C
Initial temp and time: 200 °C, 2 min
Temp Program: 200–220 °C at 5° C/min, 220 °C for 16 min, 220–235 °C at 5 °C/min, 235 °C for 7 min, 235–330 °C at 5 °C/min.

Note: All portions of the column which connect the GC to the ion source shall remain at the interface temperature specified above during analysis, to preclude condensation of less volatile compounds.

7.1.2 Mass spectrometer (MS) resolution—Obtain a selected ion current profile (SICP) of each analyte in Table 4 at the two exact masses specified in Table 3 and at > 10,000 resolving power by injecting an authentic standard of the PCDDs and PCDFs either singly or as part of a mixture in which there is no interference between closely eluted components, using the procedure in section 13.

7.1.2.1 The analysis time for PCDDs and PCDFs may exceed the long-term mass stability of the mass spectrometer. Because the instrument is operated in the high-resolution mode, mass drifts of a few ppm (e.g., 5 ppm in mass) can have serious adverse effects on instrument performance. Therefore, a mass-drift correction is mandatory. A lock-mass ion from the reference compound (PFK) is used for tuning the mass spectrometer. The lock-mass ion is dependent on the masses of the ions monitored within each descriptor, as shown in Table 3. The level of the reference compound (PFK) metered into the ion chamber during HRGC/HRMS analyses should be adjusted so that the amplitude of the most intense selected lock-mass ion signal (regardless of the descriptor number) does not exceed 10 percent of the full-scale deflection for a given set of detector parameters. Under those conditions, sensitivity changes that might occur during the analysis can be more effectively monitored.

Note: Excessive PFK (or any other reference substance) may cause noise problems and contamination of the ion source resulting in an increase in time lost in cleaning the source.

7.1.2.2 By using a PFK molecular leak, tune the instrument to meet the minimum required resolving power of 10,000 (10 percent valley) at m/z 304.9824 (PFK) or any other reference signal close to m/z 303.9016 (from TCDF). By using the peak matching unit and the PFK reference peak, verify that the exact mass of m/z 380.9760 (PFK) is within 5 PPM of the required value.

7.2 Ion abundance ratios, minimum levels, signal-to-noise ratios, and absolute retention

times—inject the CS1 calibration solution (Table 4) per the procedure in Section 13 and the conditions in Table 2.

7.2.1 Measure the SICP areas for each analyte and compute the ion abundance ratios specified in Table 3A. Compare the computed ratio to the theoretical ratio given in Table 3A.

7.2.1.1 The groups of m/z's to be monitored are shown in Table 3. Each group or descriptor shall be monitored in succession as a function of GC retention time to ensure that all PCDDs and PCDFs are detected. The theoretical abundance ratios for the m/z's are given in Table 3A, along with the control limits of each ratio.

7.2.1.2 The mass spectrometer shall be operated in a mass drift correction mode, using perfluorokerosene (PFK) to provide lock masses. The lock mass for each group of m/z's is shown in Table 3. Each lock mass shall be monitored and shall not vary by more than ±10 percent throughout its respective retention time window. Variations of the lock mass by more than 10 percent indicate the presence of coeluting interferences that may significantly reduce the sensitivity of the mass spectrometer. Re-injection of another aliquot of the sample extract will not resolve the problem. Additional cleanup of the extract may be required to remove the interferences.

7.2.2 All PCDDs and PCDFs shall be within their respective ratios; otherwise, the mass spectrometer shall be adjusted and this test repeated until the m/z ratios fall within the limits specified. If the adjustment alters the resolution of the mass spectrometer, resolution of the mass spectrometer, resolution shall be verified (Section 7.1) prior to repeat of the test.

7.2.3 Verify that the HRGC/HRMS instrument meets the minimum levels in Table 2. The peaks representing both unlabeled and labeled analytes in the calibration standards must have a signal-to-noise ratio (S/N) greater than or equal to 10; otherwise, the mass spectrometer shall be adjusted and this test repeated until the minimum levels in Table 2 are met.

7.2.4 The absolute retention time of $^{13}C_{12}$-1,2,3,4-TCDD (Section 6.12) shall exceed 25.0 minutes on the DB–5 column, and the retention time of $^{13}C_{12}$-1,2,3,4-TCDD shall exceed 15.0 minutes on the DB–225 column; otherwise, the GC temperature program shall be adjusted and this test repeated until the above-stated minimum retention time criteria are met.

7.3 Retention time windows—Analyze the window defining mixtures (Section 6.15) using the procedure in section 13 (Figures 2A–2D). Table 5 gives the elution order (first/last) of the compound pairs.

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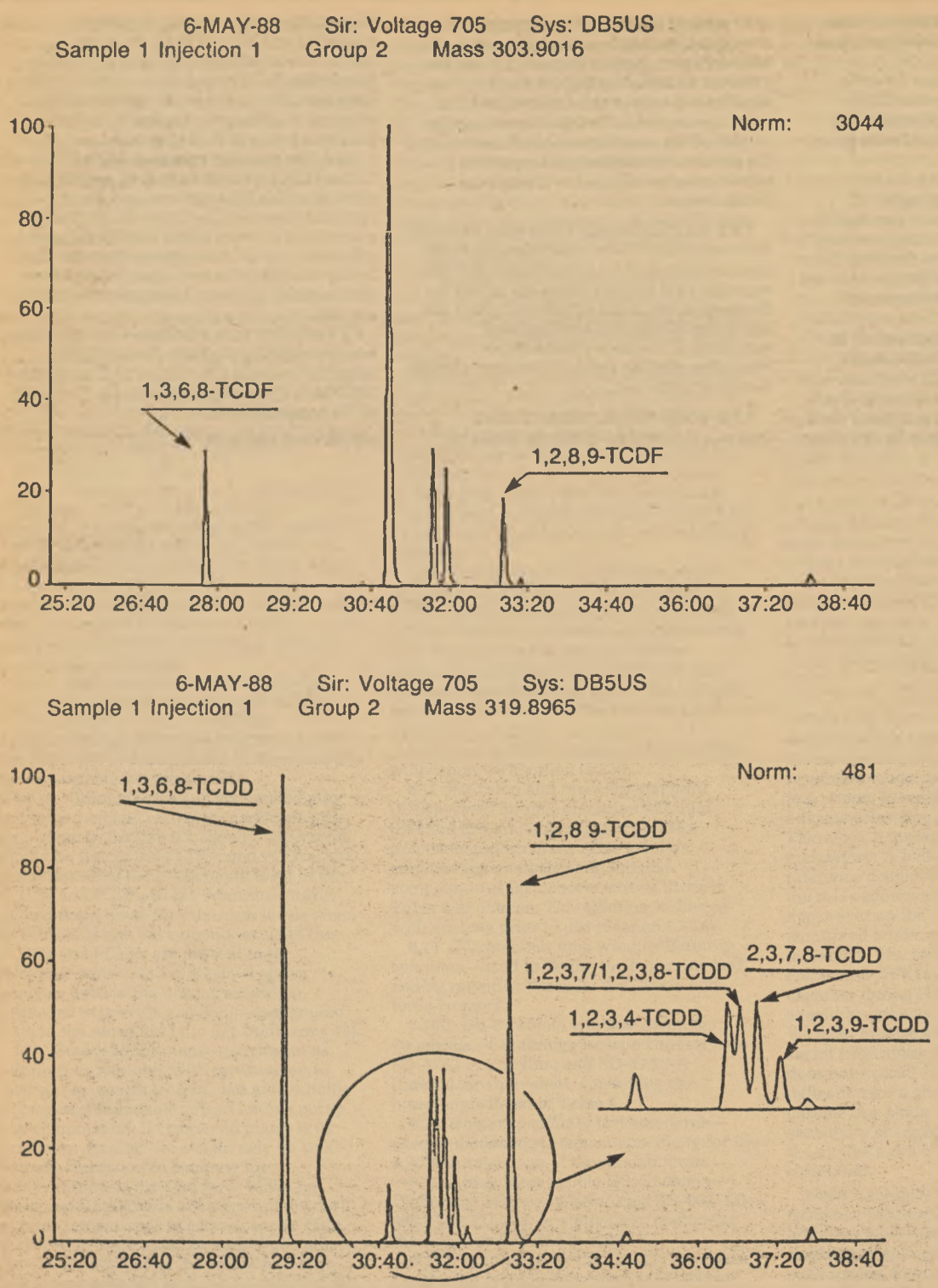


FIGURE 2A First and Last Eluted Tetra- Dioxin and Furan Isomers

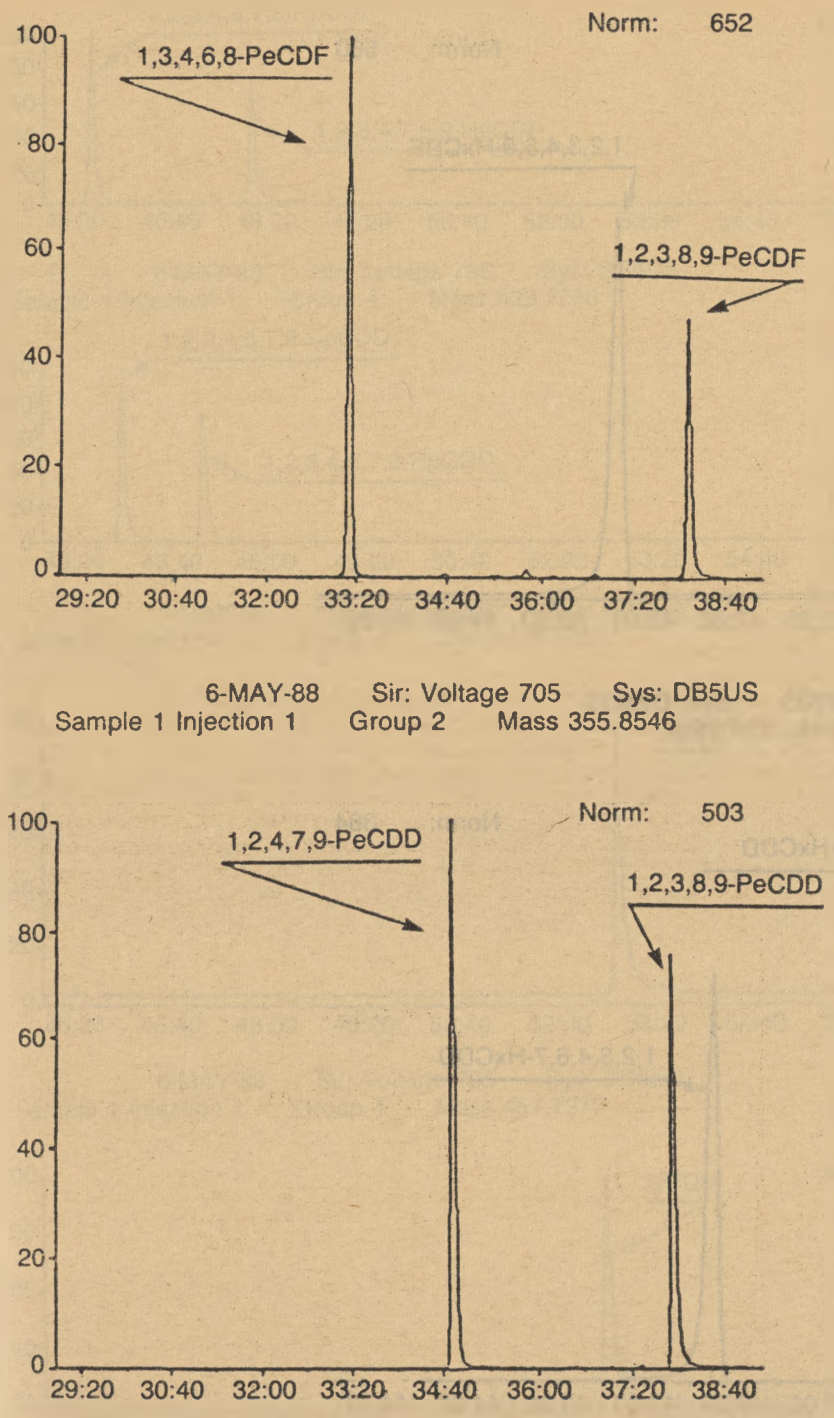
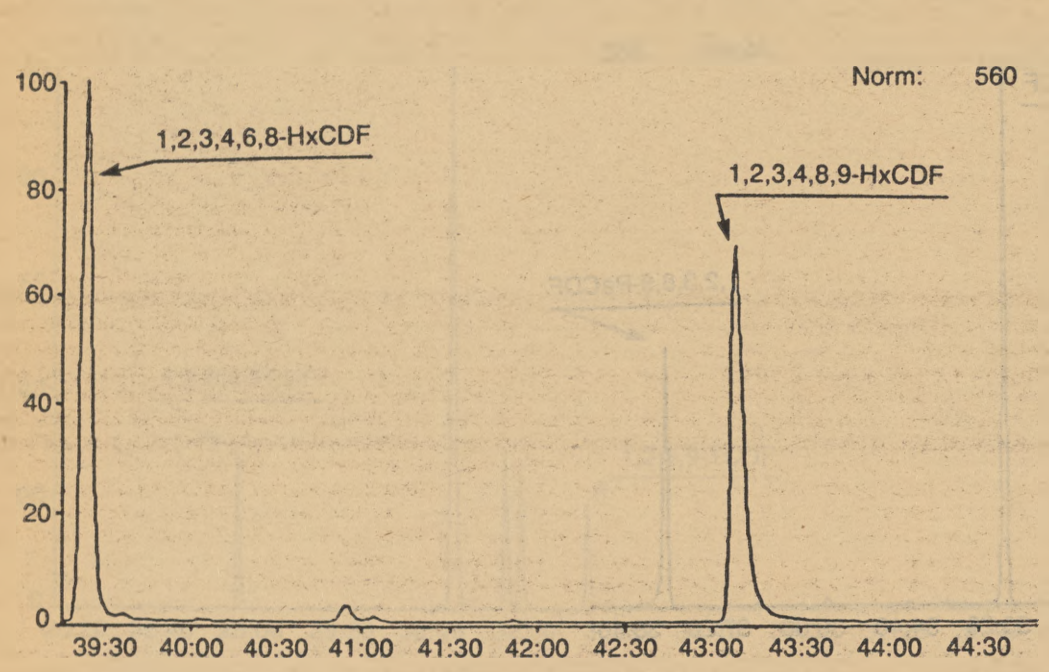


FIGURE 2B First and Last Eluted Penta- Dioxin and Furan Isomers



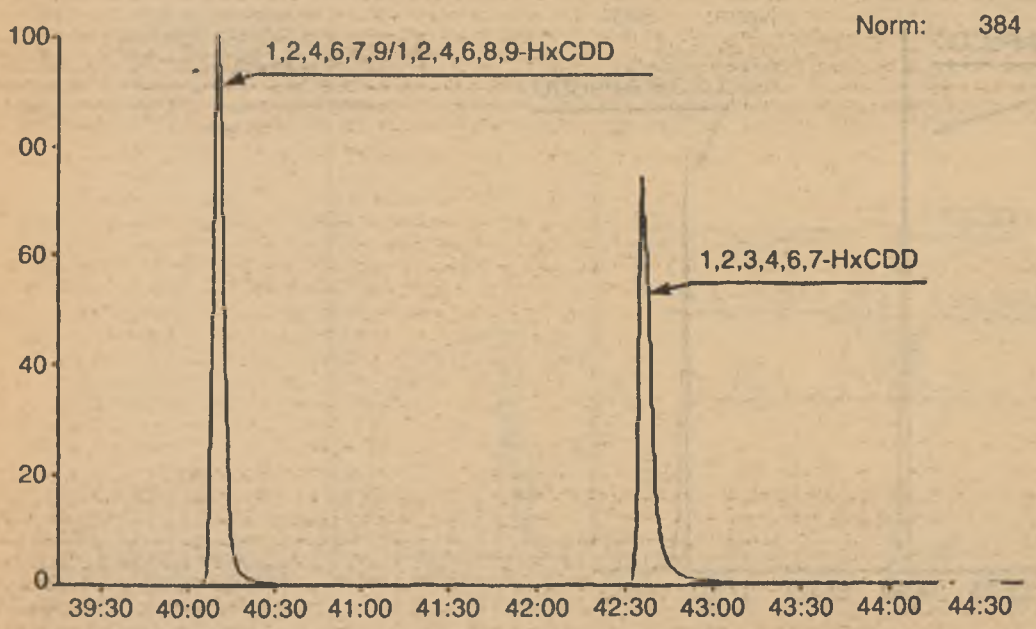


FIGURE 2C First and Last Eluted Hexa- Dioxin and Furan Isomers

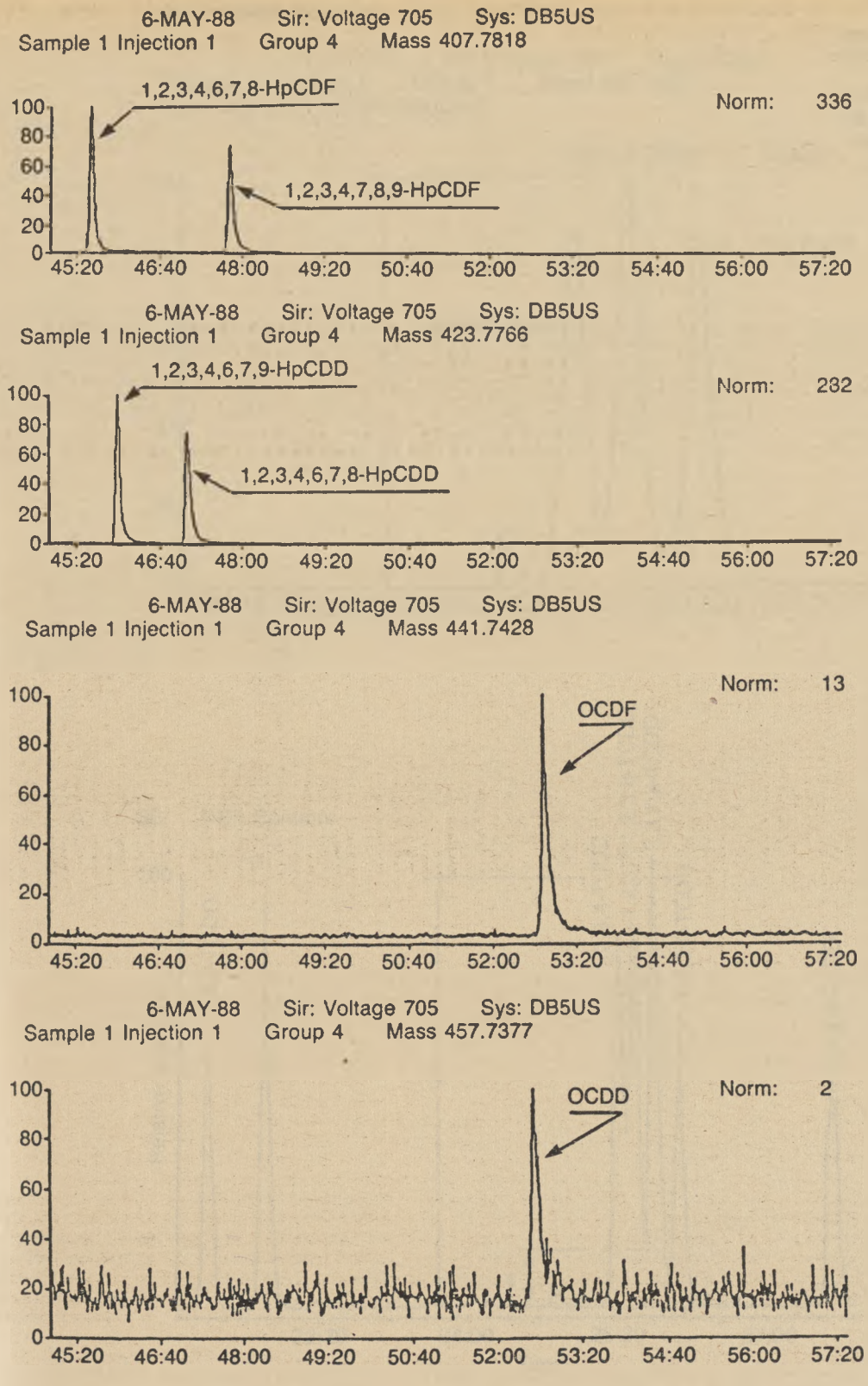


FIGURE 2D First and Last Eluted Hepta- Dioxin and Furan Isomers

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7.4 Isomer specificity.

7.4.1 Analyze the isomer specificity test standards (section 6.16) using the procedure in section 13.

7.4.2 Compute the percent valley between the GC peaks that elute most closely to the 2,3,7,8–TCDD and TCDF isomers, on their respective columns, per Figure 3.

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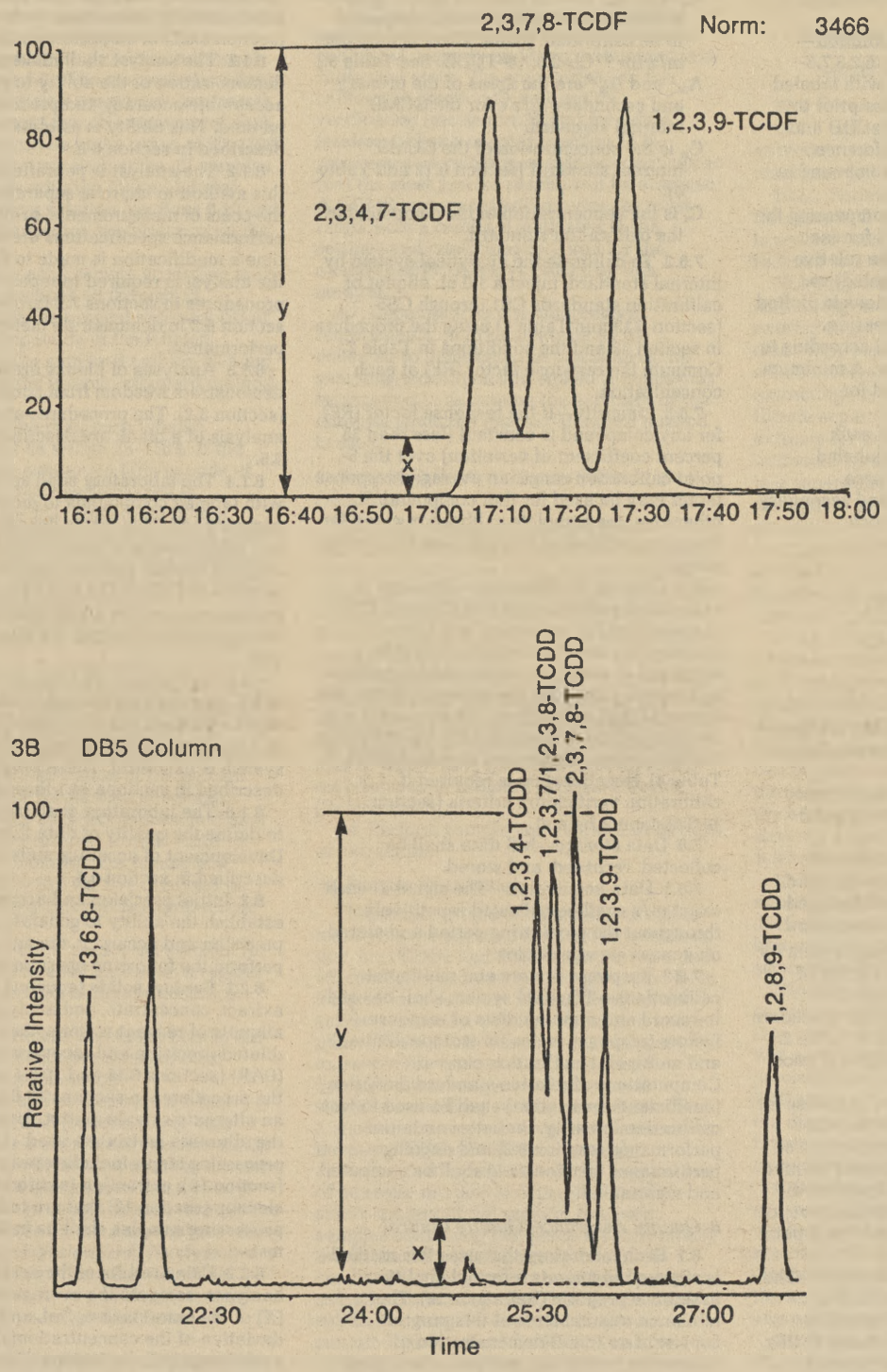

FIGURE 3 Valley between 2,3,7,8- Tetra Dioxin and Furan Isomers and Other Closely Eluted Isomers

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7.4.3 Verify that the height of the valley between the most closely eluted isomers and the 2,3,7,8-isomers is less than 25 percent (computed as 100 x/y in Figure 3). If the valley exceeds 25 percent, adjust the analytical conditions and repeat the test or replace the GC column and recalibrate (section 7.2 through 7.4).

7.5 Calibration with isotope dilution—Isotope dilution is used for the 15 2,3,7,8-substituted PCDDs and PCDFs with labeled compounds added to the samples prior to extraction, and for 1,2,3,7,8,9–HxCDD and OCDF (see section 16.1). The reference compound for each unlabeled compound is shown in Table 6.

7.5.1 A calibration curve encompassing the concentration range is prepared for each compound to be determined. The relative response (RR) (unlabeled to labeled) vs. concentration in standard solutions is plotted or computed using a linear regression. Relative response is determined according to the procedures described below. A minimum of five data points are employed for calibration.

7.5.2 The relative response of each unlabeled PCDD/PCDF and its labeled analog is determined using the area responses of both the primary and secondary m/z's specified in Table 3, for each calibration standard, as follows:

$$RR = \frac{(A_n^1 + A_n^2)C_l}{(A_l^1 + A_l^2)C_n}$$

Where:

A_n^1 and A_n^2 are the areas of the primary and secondary m/z's for the unlabeled compound.

A_l^1 and A_l^2 are the areas of the primary and secondary m/z's for the labeled compound.

C_l is the concentration of the labeled compound in the calibration standard.

C_n is the concentration of the unlabeled compound in the calibration standard.

7.5.3 To calibrate the analytical system by isotope dilution, inject a 1.0 uL aliquot of calibration standards CS1 through CS5 (section 6.13 and Table 4) using the procedure in section 13 and the conditions in Table 2. Compute the relative response (RR) at each concentration.

7.5.4 Linearity—If the relative response for any compound is constant (less than 20 percent coefficient of variation) over the 5-point calibration range, an averaged relative response may be used for that compound; otherwise, the complete calibration curve for that compound shall be used over the 5-point calibration range.

7.6 Calibration by internal standard—The internal standard method is applied to determination of non-2,3,7,8-substituted compounds having no labeled analog in this method, and to measurement of labeled compounds for intralaboratory statistics (sections 8.4 and 14.5.4).

7.6.1 Response factors—Calibration requires the determination of response factors (RF) defined by the following equation:

$$RF = \frac{(A_s^1 + A_s^2)C_{is}}{(A_{is}^1 + A_{is}^2)C_s}$$

Where:

A_s^1 and A_s^2 are the areas of the primary and secondary m/z's for the compound to be calibrated. (Note: There is only one m/z for $^{37}Cl_4$-2,3,7,8-TCDD. See Table 3.)

A_{is}^1 and A_{is}^2 are the areas of the primary and secondary m/z's for the GCMS internal standard.

C_{is} is the concentration of the GCMS internal standard (section 6.12 and Table 4).

C_s is the concentration of the compound in the calibration standard.

7.6.2 To calibrate the analytical system by internal standard, inject a 1.0 uL aliquot of calibration standards CS1 through CS5 (section 6.13 and Table 4) using the procedure in section 13 and the conditions in Table 2. Compute the response factor (RF) at each concentration.

7.6.3 Linearity—If the response factor (RF) for any compound is constant (less than 35 percent coefficient of variation) over the 5-point calibration range, an averaged response factor may be used for that compound; otherwise, the complete calibration curve for that compound shall be used over the 5-point range.

7.7 Combined calibration—By using calibration solutions (section 6.13 and Table 4) containing the unlabeled and labeled compounds, and the internal standards, a single set of analyses can be used to produce calibration curves for the isotope dilution and internal standard methods. These curves are verified each shift (section 14.3) by analyzing the calibration verification standard (VER, Table 4). Recalibration is required if calibration verification criteria (section 14.3.4) cannot be met.

7.8 Data storage—MS data shall be collected, recorded, and stored.

7.8.1 Data acquisition—The signal at each exact m/z shall be collected repetitively throughout the monitoring period and stored on a mass storage device.

7.8.2 Response factors and multipoint calibrations—The data system shall be used to record and maintain lists of response factors (response ratios for isotope dilution) and multipoint calibration curves. Computations of relative standard deviation (coefficient of variation) shall be used to test calibration linearity. Statistics on initial performance (section 8.2) and ongoing performance (section 14.5) shall be computed and maintained.

8. Quality Assurance/Quality Control

8.1 Each laboratory that uses this method is required to operate a formal quality assurance program (Reference 16). The minimum requirements of this program consist of an initial demonstration of laboratory capability, analysis of samples spiked with labeled compounds to evaluate and document data quality, and analysis of standards and blanks as tests of continued performance. Laboratory performance is compared to established performance criteria to determine if the results of analyses meet the performance characteristics of the method. If the method is to be applied routinely to samples containing high solids with very little moisture (e.g., soils, filter cake, compost) or to an alternate matrix, the high solids reference matrix (section 6.6.2) or the alternate matrix (section 6.6.4) is substituted for the reagent water matrix (section 6.6.1) in all performance tests.

8.1.1 The analyst shall make an initial demonstration of the ability to generate acceptable accuracy and precision with this method. This ability is established as described in section 8.2.

8.1.2 The analyst is permitted to modify this method to improve separations or lower the costs of measurements, provided that all performance specifications are met. Each time a modification is made to the method, the analyst is required to repeat the procedures in sections 7.2 through 7.4 and section 8.2 to demonstrate method performance.

8.1.3 Analyses of blanks are required to demonstrate freedom from contamination (section 3.2). The procedures and criteria for analysis of a blank are described in section 8.5.

8.1.4 The laboratory shall spike all samples with labeled compounds to monitor method performance. This test is described in section 8.3. When results of these spikes indicate atypical method performance for samples, the samples are diluted to bring method performance within acceptable limits. Procedures for dilutions are given in section 16.4.

8.1.5 The laboratory shall, on an ongoing basis, demonstrate through calibration verification and the analysis of the precision and recovery standard that the analytical system is in control. These procedures are described in sections 14.1 through 14.5.

8.1.6 The laboratory shall maintain records to define the quality of data that is generated. Development of accuracy statements is described in section 8.4.

8.2 Initial precision and accuracy—To establish the ability to generate acceptable precision and accuracy, the analyst shall perform the following operations.

8.2.1 For low solids (aqueous samples), extract, concentrate, and analyze four 1-liter aliquots of reagent water spiked with the diluted precision and recovery standard (PAR) (sections 6.14 and 10.3.4) according to the procedures in sections 10 through 13. For an alternate sample matrix, four aliquots of the alternate matrix are used. All sample processing steps, including preparation (section 10), extraction (section 11), and cleanup (section 12) that are to be used for processing samples shall be included in this test.

8.2.2 Using results of the set of four analyses, compute the average concentration (X) of the extracts in ng/mL and the standard deviation of the concentration(s) in ng/mL for each compound, by isotope dilution for PCDDs and PCDFs with a labeled analog, and by internal standard for labeled compounds. Calculate the recovery of the labeled compounds.

8.2.3 For each unlabeled and labeled compound, compare s and X with the

corresponding limits for initial precision and accuracy in Table 7. If s and X for all compounds meet the acceptance criteria, system performance is acceptable and analysis of blanks and samples may begin. If, however, any individual s exceeds the precision limit or any individual X falls outside the range for accuracy, system performance is unacceptable for that compound. Correct the problem and repeat the test (section 8.2). The concentration limits in Table 7 for labeled compounds are based on the requirement that the recovery of each labeled compound be in the range of 25–150%.

8.3 The laboratory shall spike all samples and QC aliquots with the diluted labeled compound spiking solution (sections 6.10 and 10.3.2) to assess method performance on the sample matrix.

8.3.1 Analyze each sample according to the procedures in sections 10 through 13.

8.3.2 Compute the percent recovery (R) of the labeled compounds in the labeled compound spiking standard and the cleanup standard using the internal standard method (section 7.6).

8.3.3 The recovery of each labeled compound must be within 25–150%. If the recovery of any compound falls outside of these limits, method performance is unacceptable for that compound in that sample. To overcome such difficulties, water samples are diluted and smaller amounts of soils, sludges, sediments and other matrices are reanalyzed per section 17.

8.4 Method accuracy for samples shall be assessed and records shall be maintained.

8.4.1 After the analysis of five samples of a given matrix type (water, soil, sludge, pulp, etc.) for which the labeled compound spiking standards pass the tests in section 8.3, compute the average percent recovery (R) and the standard deviation of the percent recovery (SR) for the labeled compounds only. Express the accuracy assessment as a percent recovery interval from R−2SR to R+2SR for each matrix. For example, if R=90% and SR=10% for five analyses of pulp, the accuracy interval is expressed as 70–110%.

8.4.2 Update the accuracy assessment for each compound in each matrix on a regular basis (e.g., after each 5–10 new accuracy measurements).

8.5 Blanks—Reference matrix blanks are analyzed to demonstrate freedom from contamination (section 3.2).

8.5.1 Extract and concentrate a 1-liter reagent water blank (section 6.6.1), high solids reference matrix blank (section 6.6.2), paper matrix blank (section 6.6.3) or alternate reference matrix blank (section 6.6.4) with each sample set (samples started through the extraction process on the same 12-hour shift, to a maximum of 20 samples). Analyze the blank immediately after analysis of the precision and recovery standard (section 14.5) to demonstrate freedom from contamination.

8.5.2 If any of the PCDDs or PCDFs (Table 1) or any potentially interfering compound is found in blank at greater than the minimum level (Table 2), assuming a response factor of 1 relative to the $^{13}C_{12}$-1,2,3,4-TCDD internal standard for compounds not listed in Table 1, analysis of samples is halted until the source of contamination is eliminated and a blank shows no evidence of contamination at this level. **Note:** All samples associated with a contaminated method blank must be re-extracted and reanalyzed before the results may be reported for regulatory compliance purposes.

8.6 The specifications contained in this method can be met if the apparatus used is calibrated properly and then maintained in a calibrated state. The standards used for calibration (section 7), calibration verification (section 14.3), and for initial (section 8.2) and ongoing (section 14.5) precision and recovery should be identical, so that the most precise results will be obtained. A GCMS instrument will provide the most reproducible results if dedicated to the settings and conditions required for the analyses of PCDDs and PCDFs by this method.

8.7 Depending on specific program requirements, field replicates may be collected to determine the precision of the sampling technique, and spiked samples may be required to determine the accuracy of the analysis when the internal standard method is used.

9. Sample Collection, Preservation, and Handling

9.1 Collect samples in amber glass containers following conventional sampling practices (Reference 17). Aqueous samples which flow freely are collected in refrigerated bottles using automatic sampling equipment. Solid samples are collected as grab samples using wide mouth jars.

9.2 Maintain samples at 0–4 °C in the dark from the time of collection until extraction. If residual chlorine is present in aqueous samples, add 80 mg sodium thiosulfate per liter of water. EPA Methods 330.4 and 330.5 may be used to measure residual chlorine (Reference 18).

9.3 Perform sample analysis within 40 days of extraction.

10. Sample Preparation

The sample preparation process involves modifying the physical form of the sample so that the PCDDs and PCDFs can be extracted efficiently. In general, the samples must be in a liquid form or in the form of finely divided solids in order for efficient extraction to take place. Table 8 lists the phase(s) and quantity extracted for various sample matrices. Samples containing a solid phase and samples containing particle sizes larger than 1 mm require preparation prior to extraction. Because PCDDs/PCDFs are strongly associated with particulates, the preparation of aqueous samples is dependent on the solids content of the sample. Aqueous samples containing one percent solids or less are extracted in a separatory funnel. A smaller sample aliquot is used for aqueous samples containing more than one percent solids. For samples expected or known to contain high levels of the PCDDs and/or PCDFs, the smallest sample size representative of the entire sample should be used, and the sample extract should be diluted, if necessary, per section 16.4.

10.1 Determination of percent solids.

10.1.1 Weigh 5–10 g of sample (to three significant figures) into a tared beaker. **Note:** This aliquot is used only for determining the solids content of the sample, not for analysis of PCDDs/PCDFs.

10.1.2 Dry overnight (12 hours minimum) at 1105 °C, and cool in a dessicator.

10.1.3 Calculate percent solids as follows:

$$\% \text{ solids} = \frac{\text{weight of sample after drying} \times 100}{\text{weight of sample before drying}}$$

10.2 Determination of particle size.

10.2.1 Spread the dried sample from section 10.1.2 on a piece of filter paper or aluminum foil in a fume hood or glove box.

10.2.2 Estimate the size of the particles in the sample. If the size of the largest particles is greater than 1 mm, the particle size must be reduced to 1 mm or less prior to extraction.

10.3 Preparation of aqueous samples containing one percent solids or less—The extraction procedure for aqueous samples containing less than or equal to one percent solids involves filtering the sample, extracting the particulate phase and the filtrate separately, and combining the extracts for analysis. The aqueous portion is extracted by shaking with methylene chloride in a separatory funnel. The particulate material is extracted using the SDS procedure.

10.3.1 Mark the original level of the sample on the sample bottle for reference. Weigh the sample in the bottle on a top loading balance to ±1 g.

10.3.2 Dilute a sufficient volume of the labeled compound stock solution by a factor of 50 with acetone to prepare the labeled compound spiking solution. 1.0 mL of the diluted solution is required for each sample, but no more solution should be prepared than can be used in one day. Spike 1.0 mL of the diluted solution into the sample bottle. Cap the bottle and mix the sample by careful shaking. Allow the sample to equilibrate for 1–2 hours, with occasional shaking.

10.3.3 For each sample or sample set (to a maximum of 20 samples) to be extracted during the same 12-hour shift, place two 1.0 liter aliquots of reagent water in clean 2 liter separatory flasks.

10.3.4 Spike 1.0 mL of the diluted labeled compound spiking standard (Section 6.10) into one reagent water aliquot. This aliquot will serve as the blank. Dilute 10 uL of the precision and recovery standard (section 6.14) to 2.0 mL with acetone. Spike 1.0 mL of the diluted precision and recovery standard into the remaining reagent water aliquot. This aliquot will serve as the PAR (section 14.5).

10.3.5 Assemble a Buchner funnel on top of a clean 1 L filtration flask. Apply a vacuum to the flask, and pour the entire contents of the sample bottle through a glass fiber filter (section 5.5.4) in the Buchner funnel, swirling the sample remaining in the bottle to suspend any particulates.

10.3.6 Rinse the sample bottle twice with 5 mL of reagent water to transfer any remaining particulates onto the filter.

10.3.7 Rinse any particulates off the sides of the Buchner funnels with small quantities of reagent water.

10.3.8 Weigh the empty sample bottle on a top-loading balance to ±1g. Determine the

weight of the sample by difference. Do not discard the bottle at this point.

10.3.9 Extract the filtrates using the procedures in Section 11.1.1.

10.3.10 Extract the particulates using the procedures in Section 11.1.2.

10.4 Preparation of samples containing greater than one percent solids.

10.4.1 Weigh a well-mixed aliquot of each sample (of the same matrix type) sufficient to provide 10 g of dry solids (based on the solids determination in 10.1.3) into a clean beaker or glass jar.

10.4.2 Spike 1.0 mL of the diluted labeled compound spiking solution (section 10.3.2) into the sample aliquot(s).

10.4.3 For each sample or sample set (to a maximum of 20 samples) to be extracted during the same 12-hour shift, weight two 10 g aliquots of the appropriate reference matrix (section 6.6) into clean beakers or glass jars.

10.4.4 Spike 1.0 mL of the diluted labeled compound spiking solution into one reference matrix aliquot. This aliquot will serve as the blank. Spike 1.0 mL of the diluted precision and recovery standard (section 10.3.4) into the remaining reference matrix aliquot. This aliquot will serve as the PAR (section 14.5).

10.4.5 Stir or tumble and equilibrate the aliquots for 1–2 hours.

10.4.6 Extract the aliquots using the procedures in section 11.

10.5 Preparation of multiphase samples.

10.5.1 Pressure filter the sample, blank, and PAR aliquots through Whatman GF/D glass fiber filter paper. If necessary, centrifuge these aliquots for 30 minutes at greater than 5000 rpm prior to filtration.

10.5.2 Discard any aqueous phase (if present). Remove any non-aqueous liquid (if present) and reserve for recombination with the extract of the solid phase (section 11.1.2.5). Prepare the filter papers of the sample and QC aliquots for particle size reduction and blending (section 10.6).

10.6 Sampling grinding, homogenization, or blending—samples with particle sizes greater than 1 mm (as determined by section 10.2.2) are subjected to grinding, homogenization, or blending. The method of reducing particle size to less than 1 mm is matrix dependent. In general, hard particles can be reduced by grinding with a mortar and pestle. Softer particles can be reduced by grinding in a Wiley mill or meat grinder, by homogenization, or by blending.

10.6.1 Each size-reducing preparation procedure on each matrix shall be verified by running the tests in section 8.2 before the procedure is employed routinely.

10.6.2 The grinding, homogenization, or blending procedures shall be carried out in a glove box or fume hood to prevent particles from contaminating the work environment.

10.6.3 Grinding—Tissue samples, certain papers and pulps, slurries, and amorphous solids can be ground in a Wiley mill or heavy duty meat grinder. In some cases, reducing the temperature of the sample to freezing or to dry ice or liquid nitrogen temperatures can aid in the grinding process. Grind the sample aliquots from section 10.4.5 or 10.5.2 in a clean grinder. Do not allow the sample temperature to exceed 50 °C. Grind the blank and reference matrix aliquots using a clean grinder.

10.6.4 Homogenization or blending—Particles that are not ground effectively, or particles greater than 1 mm in size after grinding, can often be reduced in size by high speed homogenization or blending. Homogenize and/or blend the sample, blank, and PAR aliquots from section 10.4.5, 10.5.2, or 10.6.3.

10.6.5 Extract the aliquots using the procedures in Section 11.

11. Extraction and Concentration

11.1 Extraction of filtrates—Extract the aqueous samples, blanks, and PAR aliquots according to the following procedures.

11.1.1 Pour the filtered aqueous sample from the filtration flask into a 2–L separatory funnel. Rinse the flask twice with 5 mL of reagent water and add these rinses to the separatory funnel. Add 60 mL methylene chloride to the sample bottle (section 10.3.8), seal, and shake 60 seconds to rinse the inner surface.

11.1.2 Transfer the solvent to the separatory funnel and extract the sample by shaking the funnel for 2 minutes with periodic venting. Allow the organic layer to separate from the water phase for a minimum of 10 minutes. If the emulsion interface between layers is more than one-third the volume of the solvent layer, employ mechanical techniques to complete the phase separation (e.g., a glass stirring rod). Drain the methylene chloride extract into a solvent-rinsed glass funnel approximately one-half full of clean sodium sulfate. Set up the glass funnel so that it will drain directly into a solvent-rinsed 500-mL K–D concentrator fitted with a 10 mL concentrator tube. Note: Experience with aqueous samples high in dissolved organic materials (e.g., paper mill effluents) has shown that acidification of the sample prior to extraction may reduced the formation of emulsions. Paper industry methods suggest that the addition of up to 400 mL of ethanol to a 1 L effluent sample may also reduce emulsion formation. However, studies by the Agency to date suggest that the effect may be a result of the dilution of the sample, and that the addition of reagent water may serve the same function. Mechanical techniques may still be necessary to complete the phase separation. If either of these techniques is utilized, the laboratory must perform the startup tests described in section 8.2 using the same techniques.

11.1.3 Extract the water sample two more times using 60 mL of fresh methylene chloride each time. Drain each extract through the funnel containing the sodium sulfate into the K–D concentrator. After the third extraction, rinse the separatory funnel with at least 20 mL of fresh methylene chloride, and drain this rinse through the sodium sulfate into the concentrator. Repeat this rinse at least twice.

11.1.4 The extract of the filtrate must be concentrated before it is combined with the extract of the particulates for further cleanup. Add one or two clean boiling chips to the receiver and attach a three-ball macro Snyder column. Pre-wet the column by adding approximately 1 mL of hexane through the top. Place the K–D apparatus in a hot water bath so that the entire lower rounded surface of the flask is bathed with steam.

11.1.5 Adjust the vertical position of the apparatus and the water temperature as required to complete the concentration in 15–20 minutes. At the proper rate of distillation, the balls of the column will actively chatter but the chambers will not flood.

11.1.6 When the liquid has reached an apparent volume of 1 mL, remove the K–D apparatus from the bath and allow the solvent to drain and cool for at least 10 minutes. Remove the Snyder column and rinse the flask and its lower joint into the concentrator tube with 1–2 mL of hexane. A 5 mL syringe is recommended for this operation.

11.1.7 The concentrated extracts of the filtrate and the particulates are combined using the procedures in section 11.2.13.

11.2 Soxhlet/Dean-Stark extraction of solids—Extract the solid samples, particulates, blanks, and PAR aliquots using the following procedure.

11.2.1 Charge a clean extraction thimble with 5.0 g of 100/200 mesh silica (section 6.5.1.1) and 100 g of quartz sand (section 6.3.2). Note: Do not disturb the silica layer throughout the extraction process.

11.2.2 Place the thimble in a clean extractor. Place 30–40 mL of toluene in the receiver and 200–250 mL of toluene in the flask.

11.2.3 Pre-extract the glassware by heating the flask until the toluene is boiling. When properly adjusted, 1–2 drops of toluene per second will fall from the condensor tip into the receiver. Extract the apparatus for three hours minimum.

11.2.4 After pre-extraction, cool and disassemble the apparatus. Rinse the thimble with toluene and allow to air dry.

11.2.5 Load the wet sample from sections 10.4.6, 10.5.2, 10.6.3, or 10.6.4, and any nonaqueous liquid from section 10.5.2 into the thimble and manually mix into the sand layer with a clean metal spatula carefully breaking up any large lumps of sample. If the material to be extracted is the particulate matter from the filtration of an aqueous sample, add the filter paper to the thimble also.

11.2.6 Reassemble the pre-extracted SDS apparatus and add a fresh charge of toluene to the receiver and reflux flask.

11.2.7 Apply power to the heating mantle to begin refluxing. Adjust the reflux rate to match the rate of percolation through the sand and silica beds until water removal lessens the restriction to toluene flow. Check the apparatus for foaming frequently during the first 2 hours of extraction. If foaming occurs, reduce the reflux rate until foaming subsides.

11.2.8 Drain the water from the receiver at 1–2 hours and 8–9 hours, or sooner if the receiver fills with water. Reflux the sample for a total of 16–24 hours. Cool and disassemble the apparatus. Record the total volume of water collected.

11.2.9 Remove the distilling flask. Drain the water from the Dean Stark receiver and add any toluene in the receiver to the extract in the flask.

11.2.10 For solid samples, the extract must be concentrated to approximately 10 mL prior to back extraction. For the particulates filtered from an aqueous sample, the extract

must be concentrated prior to combining with the extract of the filtrate. Therefore, add one or two clean boiling chips to the round bottom flask and attach a three-ball macro Snyder column. Pre-wet the column by adding approximately 1 mL of toluene through the top. Place the round bottom flask in a heating mantle and apply heat as required to complete the concentration in 15–20 minutes. At the proper rate of distillation, the balls of the column will actively chatter but the chambers will not flood.

11.2.11 When the liquid has reached an apparent volume of 10 mL, remove the round bottom flask from the heating mantle and allow the solvent to drain and cool for at least 10 minutes. Remove the Snyder column.

11.2.12 If the extract is from a solid sample, not the particulates from an aqueous sample, transfer the concentrated extract to a 250 mL separatory funnel. Rinse the flask with toluene and add the rinse to the separatory funnel. Proceed with back extraction per section 11.3.

11.2.13 If the extract is from the particulates from an aqueous sample, it must be combined with the concentrated extract of the filtrate (section 11.1.7) prior to back extraction. Assemble the glass funnel filled approximately one-half full with sodium sulfate from section 11.1.2 such that the funnel will drain into the K–D concentrator from section 11.1.7 containing the concentrated methylene chloride extract of the filtrate. Pour the concentrated toluene extract of the particulates through the sodium sulfate into the K–D concentrator. Rinse the round-bottom flask with three 15–20 mL volumes of hexane, and pour each rinse through the sodium sulfate into the K–D concentrator. Add one or two fresh boiling chips to the receiver and attach the three-ball macro Snyder column to the K–D concentrator. Pre-wet the column by adding approximately 1 mL of hexane to the top of the column. Concentrate the combined extract to approximately 10 mL (the volume of the toluene). Remove the K–D apparatus from the bath and allow the solvent to drain the cool for at least 10 minutes. Remove the Snyder column. Transfer the contents of the K–D concentrator to a pre-rinsed 250 mL separatory funnel. Rinse the flask and lower joint with three 5 mL volumes of hexane, and add each rinse to the separatory funnel. Proceed with back extraction per section 11.3.

11.3 Back extraction with base and acid.

11.3.1 Spike 1.0 mL of the cleanup standard (section 6.11) into the separatory funnels containing the sample and QC extracts (section 11.2.12 or 11.2.13).

11.3.2 Partition the extract against 50 mL of potassium hydroxide solution (section 6.1.1.). Shake for 2 minutes with periodic venting into a hood. Remove and discard the aqueous layer. Repeat the base washing until no color is visible in the aqueous layer, to a maximum of four washings. Minimize contact time between the extract and the base to prevent degradation of the PCDDs and PCDFs. Stronger potassium hydroxide solutions may be employed for back extraction, provided that the laboratory meets the specifications for labeled compound recovery and demonstrates acceptable performance using the procedures in section 8.2.

11.3.3 Partition the extract against 50 mL of sodium chloride solution (section 6.1.3) in the same way as with base. Discard the aqueous layer.

11.3.4 Partition the extract against 50 mL of sulfuric acid (section 6.1.2) in the same way as with base. Repeat the acid washing until no color is visible in the aqueous layer, to a maximum of four washings.

11.3.5 Repeat the partitioning against sodium chloride solution and discard the aqueous layer.

11.3.6 Pour each extract through a drying column containing 7 to 10 cm of anhydrous sodium sulfate. Rinse the separatory funnel with 30–50 mL of toluene and pour through the drying column. Collect each extract in a 500 mL round bottom flask. Concentrate and clean up the samples and QC aliquots per sections 11.4 and 12.

11.4 Macro-concentration—Concentrate the extracts in separate 100 mL round bottom flasks on a rotary evaporator.

11.4.1 Assemble the rotary evaporator according to manufacturer's instructions, and warm the water bath of 45°C. On a daily basis, preclean the rotary evaporator by concentrating 100 mL of clean extraction solvent through the system. Archive both the concentrated solvent and the solvent in the catch flask for contamination check if necessary. Between samples, three 2–3 mL aliquots of toluene should be rinsed down the feed tube into a waste beaker.

11.4.2 Attach the round bottom flask containing the sample extract to the rotary evaporator. Slowly apply vacuum to the system, and begin rotating the sample flask.

11.4.3 Lower the flask into the water bath and adjust the speed of rotation and the temperature as required to complete the concentration in 15–20 minutes. At the proper rate of concentration, the flow of solvent into the receiving flask will be steady, but no bumping or visible boiling of the extract will occur. **Note:** If the rate of concentration is too fast, analyte loss may occur.

11.4.4 When the liquid in the concentration flask has reached an apparent volume of 2 mL, remove the flask from the water bath and stop the rotation. Slowly and carefully, admit air into the system. Be sure not to open the valve so quickly that the sample is blown out of the flask. Rinse the feed tube with approximately 2 mL of hexane.

11.4.5 Transfer the extract to a vial using three 2–3 mL rinses of hexane. Proceed with micro-concentration and solvent exchange.

11.5 Micro-concentration and solvent exchange.

11.5.1 Toluene extracts to be subjected to GPC or HPLC cleanup are exchanged into methylene chloride. Extracts that are to be cleaned up using silica gel, alumina, and/or AX–21/Celite are exchanged into hexane.

11.5.2 Transfer the vial containing the sample extract to a nitrogen evaporation device. Adjust the flow of nitrogen so that the surface of the solvent is just visibly disturbed. **Note:** A large vortex in the solvent may cause analyte loss.

11.5.3 Lower the vial into a 45 °C water bath and continue concentrating.

11.5.4 When the volume of the liquid is approximately 100 uL, and 2–3 mL of the desired solvent (methylene chloride or hexane) and continue concentration to approximately 100 uL. Repeat the addition of solvent and concentrate once more.

11.5.5 If the extract is to be cleaned up by GPC or HPLC, adjust the volume of the extract to 5.0 mL with methylene chloride. Proceed with GPC cleanup (section 12.2).

11.5.6 If the extract is to be cleaned up by column chromatography (alumina, silica gel, AX–21/Celite), bring the final volume to 1.0 mL with hexane. Proceed with column cleanups (sections 12.3–12.5).

11.5.7 For extracts to be concentrated for injection into the GCMS—Add 10 uL of nonane to the vial. Evaporate the solvent to the level of the nonane. Evaporate the hexane in the vial to the level of the nonane.

11.5.8 Seal the vial and label with the sample number. Store in the dark at room temperature until ready for GCMS analysis.

12. Extract Cleanup

12.1 Cleanup may not be necessary for relatively clean samples (e.g., treated effluents, groundwater, drinking water). If particular circumstances require the use of a cleanup procedure, the analyst may use any or all of the procedures below or any other appropriate procedure. Before using a cleanup procedure, the analyst must demonstrate that the requirements of section 8.2 can be met using the cleanup procedure.

12.1.1 Gel permeation chromatography (section 12.2) removes many high molecular weight interferences that cause GC column performance to degrade. It may be used for all soil and sediment extracts and may be used for water extracts that are expected to contain high molecular weight organic compounds (e.g., polymeric materials, humic acids).

12.1.2 Acid, neutral, and basic silica gel, and alumina (sections 12.3 and 12.4) are used to remove nonpolar and polar interferences.

12.1.3 AX–21/Celite (section 12.5) is used to remove nonpolar interferences.

12.1.4 HPLC (section 12.6) is used to provide specificity for the 2,3,7,8-substituted and other PCDD and PCDF isomers.

12.2 Gel permeation chromatography (GPC)

12.2.1 Column packing

12.2.1.1 Place 70–75 g of SX–3 Bio-beads in a 400–500 mL beaker.

12.2.1.2 Cover the beads with methylene chloride and allow to swell overnight (12 hours minimum).

12.2.1.3 Transfer the swelled beads to the column and pump solvent through the column, from bottom to top, at 4.5–5.5 mL/min prior to connecting the column to the detector.

12.2.1.4 After purging the column with solvent for 1–2 hours, adjust the column head pressure to 7–10 psig and purge for 4–5 hours to remove air. Maintain a head pressure of 7–10 psig. Connect the column to the detector.

12.2.2 Column calibration.

12.2.2.1 Load 5 mL of the calibration solution (section 6.4) into the sample loop.

12.2.2.2 Inject the calibration solution and record the signal from the detector. The elution pattern will be corn oil, bis(2-ethyl hexyl) phthalate, pentachlorophenol, perylene, and sulfur.

12.2.2.3 Set the "dump time" to allow >85 percent removal of the corn oil and >85 percent collection of the phthalate.

12.2.2.4 Set the "collect time" to the peak minimum between perylene and sulfur.

12.2.2.5 Verify the calibration with the calibration solution after every 20 extracts. Calibration is verified if the recovery of the pentachlorophenol is greater than 85 percent. If calibration is not verified, the system shall be recalibrated using the calibration solution, and the previous 20 samples shall be re-extracted and cleaned up using the calibrated GPC system.

12.2.3 Extract cleanup—GPC requires that the column not be overloaded. The column specified in this method is designed to handle a maximum of 0.5 g of high molecular weight material in a 5 ml extract. If the extract is known or expected to contain more than 0.5 g, the extract is split into aliquots for GPC and the aliquots are combined after elution from the column. The residue content of the extract may be obtained gravimetrically by evaporating the solvent from a 50 µL aliquot.

12.2.3.1 Filter the extract or load through the filter holder to remove particulates. Load the 5.0 mL extract onto the column.

12.2.3.2 Elute the extract using the calibration data determined in section 12.2.2. Collect the eluate in a clean 400–500 mL beaker.

12.2.3.3 Rinse the sample loading tube thoroughly with methylene chloride between extracts to prepare for the next sample.

12.2.3.4 If a particularly dirty extract is encountered, a 5.0 mL methylene chloride blank shall be run through the system to check for carryover.

12.2.3.5 Concentrate the eluate per Section 11.2.1, 11.2.2, and 11.3.1 or 11.3.2 for further cleanup or for injection into the GCMS.

12.3 Silica gel cleanup.

12.3.1 Place a glass wool plug in a 15 mm i.d. chromatography column. Pack the column in the following order (bottom to top): 1 g silica gel (section 6.5.1.1), four g basic silica gel (section 6.5.1.3), 1 g silica gel, 8 g acid silica gel (section 6.5.1.2) 2 g silica gel. Tap the column to settle the adsorbents.

12.3.2 Pre-rinse the column with 50–100 mL of hexane. Close the stopcock when the hexane is within 1 mm of the sodium sulfate. Discard the eluate. Check the column for channeling. If channeling is present, discard the column and prepare another.

12.3.3 Apply the concentrated extract to the column. Open the stopcock until the extract is within 1 mm of the sodium sulfate.

12.3.4 Rinse the receiver twice with 1 mL portions of hexane and apply separately to the column. Elute the PCDDs/PCDFs with 100 mL hexane and collect the eluate.

12.3.5 Concentrate the eluate per section 11.4 or 11.5 for further cleanup or for injection into the HPLC or GCMS.

12.3.6 For extracts of samples known to contain large quantities of other organic compounds (such as paper mill effluents) it may be advisable to increase the capacity of the silica gel column. This may be accomplished by increasing the strengths of the acid and basic silica gels. The acid silica gel (section 6.5.1.2) may be increased in strength to as much as 44% w/w (7.9 g sulfuric acid added to 10 g silica gel). The basic silica gel (section 6.5.1.3) may be increased in strength to as much as 33% w/w (50 mL 1N NaOH added to 100 g silica gel). **Note:** The use of stronger acid silica gel (44% w/w) may lead to charring of organic compounds in some extracts. The charred material may retain some of the analytes and lead to lower recoveries of PCDDs/PCDFs. Increasing the strengths of the acid and basic silica gel may also require different volumes of hexane than those specified above, to elute the analytes off the column. Therefore, the performance of the method after such modifications must be verified by the procedures in section 8.2.

12.4 Alumina cleanup.

12.4.1 Place a glass wool plug in a 15 mm i.d. chromatography column.

12.4.2 If using acid alumina, pack the column by adding 6 g acid alumina (section 6.5.2.1). If using basic alumina, substitute 6 g basic alumina (section 6.5.2.2). Tap the column to settle the adsorbents.

12.4.3 Pre-rinse the column with 50–100 mL of hexane. Close the stopcock when the hexane is within 1 mm of the alumina.

12.4.4 Discard the eluate. Check the column for channeling. If channeling is present, discard the column and prepare another.

12.4.5 Apply the concentrated extract to the column. Open the stopcock until the extract is within 1 mm of the alumina.

12.4.6 Rinse the receiver twice with 1 mL portions of hexane and apply separately to the column. Elute the interfering compounds with 100 mL hexane and discard the eluate.

12.4.7 The choice of eluting solvents will depend on the choice of alumina (acid or basic) made in section 12.4.2.

12.4.7.1 If using acid alumina, elute the PCDDs and PCDFs from the column with 20 mL methylene chloride:hexane (20:80 v/v). Collect the eluate.

12.4.7.2 If using basic alumina, elute the PCDDs and PCDFs from the column with 20 mL methylene chloride:hexane (50:50 v/v). Collect the eluate.

12.4.8 Concentrate the eluate per section 11.4 or 11.5 for further cleanup or for injection into the HPLC or GCMS.

12.5 AX–21/Celite.

12.5.1 Cut both ends from a 10 mL disposable serological pipet to produce a 10 cm column. Fire polish both ends and flare both ends if desired. Insert a glass wool plug at one end, then pack the column with 1 g of the activated AX–21/Celite to form a 2 cm long adsorbent bed. Insert a glass wool plug on top of the bed to hold the adsorbent in place.

12.5.2 Pre-rinse the column with five mL of toluene followed by 2 mL methylene chloride:methanol:toluene (15:4:1 v/v), 1 mL methylene chloride:cyclohexane (1:1 v/v), and five mL hexane. If the flow rate of eluate exceeds 0.5 mL per min, discard the column.

12.5.3 When the solvent is within 1 mm of the column packing, apply the sample extract to the column. Rinse the sample container twice with 1 mL portions of hexane and apply separately to the column. Apply 2 mL of hexane to complete the transfer.

12.5.4 Elute the interfering compounds with 2 mL of hexane, 2 mL of methylene chloride: cyclohexane (1:1 v/v), and 2 mL of methylene chloride:methanol:toluene (15:4:1 v/v). Discard the eluate.

12.5.5 Invert the column and elute the PCDDs and PCDFs with 20 mL of toluene. If carbon particles are present in the eluate, filter through glass fiber filter paper.

12.5.6 Concentrate the eluate per section 11.4 or 11.5 for further cleanup or for injection into the HPLC or GCMS.

12.6 HPLC (Reference 6).

12.6.1 Column calibration.

12.6.1.1 Prepare a calibration standard containing the 2,3,7,8-isomers and/or other isomers of interest at a concentration of approximately 500 pg/µL in methylene chloride.

12.6.1.2 Inject 30 µL of the calibration solution into the HPLC and record the signal from the detector. Collect the eluant for reuse. The elution order will be the tetra- through octaisomers.

12.6.1.3 Establish the collect time for the tetra-isomers and for the other isomers of interest. Following calibration, flush the injection system with copious quantities of methylene chloride, including a minimum of five 50-µL injections while the detector is monitored, to ensure that residual PCDDs and PCDFs are removed from the system.

12.6.1.4 Verify the calibration with the calibration solution after every 20 extracts. Calibration is verified if the recovery of the PCDDs and PCDFs from the calibration standard (section 12.6.1.1) is 75–125 percent compared to the calibration (section 12.6.1.2). If calibration is not verified, the system shall be recalibrated using the calibration solution, and the previous 20 samples shall be re-extracted and cleaned up using the calibrated system.

12.6.2 Extract cleanup—HPLC requires that the column not be overloaded. The column specified in this method is designed to handle a maximum of 30 µL of extract. If the extract cannot be concentrated to less than 30 µL, it is split into fractions and the fractions are combined after elution from the column.

12.6.2.1 Rinse the sides of the vial twice with 30 µL of methylene chloride and reduce to 30 µL with the blowdown apparatus.

12.6.2.2 Inject the 30 µL extract into the HPLC.

12.6.2.3 Elute the extract using the calibration data determined in 12.6.1. Collect the fraction(s) in a clean 20 mL concentrator tube containing 5 mL of hexane:acetone (1:1 v/v).

12.6.2.4 If an extract containing greater than 100 ng/mL of total PCDD or PCDF is encountered, a 30 µL methlene chloride blank shall be run through the system to check for carryover.

12.6.2.5 Concentrate the eluate per section 11.5 for injection into the GCMS.

13. HRGC/RHMS Analysis

13.1 Establish the operating conditions given in section 7.1.

13.2 Add 10 µL of the internal standard solution (section 6.12) to the sample extract immediately prior to injection to minimize the possibility of loss by evaporation, adsorption, or reaction. If an extract is to be reanalyzed

and evaporation has occurred, do not add more instrument internal standard solution. Rather, bring the extract back to its previous volume (e.g., 19 μL) with pure nonane only.

13.3 Inject 1.0 μL of the concentrated extract containing the internal standard solution, using on-column or splitless injection. Start the GC column initial isothermal hold upon injection. Start MS data collection after the solvent peak elutes. Stop data collection after the octachloro-dioxin and furan have eluted. Return the column to the initial temperature for analysis of the next extract or standard.

14. System and Laboratory Performance

14.1 At the beginning of each 12-hour shift during which analyses are performed, GCMS system performance and calibration are verified for all unlabeled and labeled compounds. For these tests, analysis of the CS3 calibration verification (VER) standard (section 6.13 and Table 4) and the isomer specificity test standards (sections 6.16 and Table 5) shall be used to verify all performance criteria. Adjustment and/or recalibration (per section 7) shall be performed until all performance criteria are met. Only after all performance criteria are met may samples, blanks, and precision and recovery standards by analyzed.

14.2 MS resolution—A static resolving power of at least 10,000 (10 percent valley definition) must be demonstrated at appropriate masses before any analysis is performed. Static resolving power checks must be performed at the beginning and at the end of each 12-hour shift according to procedures in section 7.1.2. Corrective actions must be implemented whenever the resolving power does not meet the requirement.

14.3 Calibration verification.

14.3.1 Inject the VER standard using the procedure in section 13.

14.3.2 The m/z abundance ratios for all PCDDs and PCDFs shall be within the limits in Table 3A; otherwise, the mass spectrometer shall be adjusted until the m/z abundance ratios fall within the limits specified, and the verification test (section 14.3.1) repeated. If the adjustment alters the resolution of the mass spectrometer, resolution shall be verified (section 7.1.2) prior to repeat of the verification test.

14.3.3 The peaks representing each unlabeled and labeled compound in the VER standard must be present with a S/N of at least 10; otherwise, the mass spectrometer shall be adjusted and the verification test (section 14.3.1) repeated.

14.3.4 Compute the concentration of each unlabeled compound by isotope dilution (section 7.5) for those compounds that have labeled analogs (Table 1). Compute the concentration of the labeled compounds by the internal standard method. These concentrations are computed based on the averaged relative response and averaged response factor from the calibration data in section 7.

14.3.5 For each compound, compare the concentration with the calibration verification limit in Table 7. If all compounds meet the acceptance criteria, calibration has been verified. If, however, any compound fails, the measurement system is not performing properly for that compound. In this event, prepare a fresh calibration standard or correct the problem causing the failure and repeat the resolution (section 14.2) and verification (section 14.3.1) tests, or recalibrate (section 7).

14.4 Retention times and GC resolution.

14.4.1 Retention times

14.4.1.1 Absolute—Absolute retention times of the $^{13}C_{12}$–1,2,3,4-TCDD and $^{13}C_{12}$–1,2,3,7,8,9-HxCDD GCMS internal standards shall be within ±15 seconds of the retention times obtained during calibration (section 7.2.4).

14.4.1.2 Relative—Relative retention times of unlabeled and labeled PCDDs and PCDFs shall be within the limits given in Table 2.

14.4.2 GC resolution.

14.4.2.1 Inject the isomer specificity standards (section 6.16) on their respective columns.

14.4.2.2 The valley height between 2,3,7,8-TCDD and the other tetra-dioxin isomers at m/z 319.8965, and between 2,3,7,8-TCDF and the other tetra-furan isomers at m/z 303.9016 shall not exceed 25 percent of their respective columns (Figure 3).

14.4.3 If the absolute retention time of any compound is not within the limits specified or the 2,3,7,8-isomers are not resolved, the GC is not performing properly. In this event, adjust the GC and repeat the verification test (section 14.3.1) or recalibrate (section 7).

14.5 Ongoing precision and accuracy

14.5.1 Analyze the extract of the diluted precision and recovery standard (PAR) (section 10.3.4 or 10.4.4) prior to analysis of samples from the same set.

14.5.2 Compute the concentration of each PCDD and PCDF by isotope dilution for those compounds that have labeled analogs (section 7.5). Compute the concentration of each labeled compound by the internal standard method.

14.5.3 For each unlabeled and labeled compound, compare the concentration with the limits for ongoing accuracy in Table 7. If all compounds meet the acceptance criteria, system performance is acceptable and anlysis of blanks and samples may proceed. If, however, any individual concentration falls outside of the range given, the extraction/concentration processes are not being performed properly for that compound. In this event, correct the problem, re-extract the sample set (section 10) and repeat the ongoing precision and recovery test (section 14.5). The concentration limits in Table 7 for labeled compounds are based on the requirement that the recovery of each labeled compound be in the range of 25–150%.

14.5.4 Add results which pass the specification in section 14.5.3 to initial and previous ongoing data for each compound in each matrix. Update QC charts to form a graphic representation of continued laboratory performance. Develop a statement of laboratory accuracy for each PCDD and PCDF in each matrix type by calculating the average percent recovery (R) and the standard deviation of percent recovery (SR). Express the accuracy as a recovery interval from R−2SR to R+2SR. for example, if R=95% and SR=5%, the accuracy is 85–105%.

15. Qualitative Determination

For a gas chromatographic peak to be identified as a PCDD or PCDF (either a unlabeled or a labeled compound), it must meet all of the criteria in sections 15.1–15.4.

15.1 The signals for two exact m/z's being monitored (Table 3) must be present, and must maximize within ±2 seconds of one another.

15.2 The signal-to-noise ratio (S/N) of each of the two exact m/z's must be greater than or equal to 2.5 for a sample extract, and greater than or equal to 10 for a calibration standard (see sections 7.2.3 and 14.3.3).

15.3 The ratio of the integrated ion currents of both the exact m/z's monitored must be within the limits in Table 3A.

15.4 The relative retention time of the peaks representing a unlabeled 2,3,7,8-substituted PCDD or PCDF must be within the limits given in Table 2. The retention time of peaks representing non-2,3,7,8-substituted PCDDS or PCDFs must be within the retention time windows established in section 7.3.

15.5 Confirmatory analysis-Isomer specificity for all of the 2,3,7,8-substituted analytes cannot be attained by analysis on the DB–5 (or equivalent) GC column alone. The lack of specificity is of greatest concern for the unlabled 2,3,7,8-TCDF. Therefore, any sample in which 2,3,7,8-TCDF is identified by analysis on a DB–5 (or equivalent) GC column must have a confirmatory analysis performed on a DB–225, SP–2330, or equivalent GC column. The operating conditions in section 7.1.1 may be adjusted for analyses on the second GC column, but the GCMS must meet the mass resolution and calibration specifications in section 7.

15.6 If any gas chromatographic peak meets the identification criteria in sections 15.1, 15.2, and 15.4, but does not meet the ion abundance ratio criterion (section 15.3), and is not a labeled analog, that sample must be analyzed on a second GC column, as in section 15.5 above. Interferences co-eluting in either of the two m/z's may cause the ion abundance ratio to fall outside of the limits in Table 3A. If the ion abundance ratio of the peak fails to meet the criteria on the second GC column, then the peak does not represent a PCDD or PCDF. If the peak does meet all of the criteria in sections 15.1–15.4 on the second GC column, then calculate the concentration of that peak from the analysis on the second GC column, according to the procedures in section 16.

15.7 If any gas chromatographic peak that represents a labeled analog does not meet all of the identification criteria in sections 15.1–15.4 on the second GC column, then the results may not be reported for regulatory compliance purposes and a new aliquot of the sample must be extracted and analyzed.

16. Quantitative Determination

16.1 Isotope dilution—By adding a known amount of a labeled compound to every sample prior to extraction, correction for recovery of the unlabeled compound can be made because the unlabeled compound and its labeled analog exhibit similar effects upon extraction, concentration, and gas chromatography. Relative response (RR)

values are used in conjunction with calibration data described in section 7.5 to determine concentrations directly, so long as labeled compound spiking levels are constant, using the following equation:

$$C_{ex}(ng/mL) = \frac{(A_n^1 + A_n^2)\, C_{is}}{(A_i^1 + A_i^2)\, RR}$$

Where:

C_{ex} is the concentration at the unlabeled compound in the extract and other terms are as defined in section 7.5.2.

16.1.1 Because of a potential interference, the labeled analog of OCDF is not added to the sample. Therefore, this unlabeled analyte is quantitated against the labeled OCDD. As a result, the concentration of unlabeled OCDF is corrected for the recovery of the labeled OCDD. In instances where OCDD and OCDF behave differently during sample extraction, concentration, and cleanup procedures, this may decrease the accuracy of the OCDF results. However, given the low toxicity of this compound relative to the other dioxins and furans, the potential decrease in accuracy is not considered significant.

16.1.2 Because the labeled analog of 1,2,3,7,8,9-HxCDD is used as an internal standard (i.e., not added before extraction of the sample), it cannot be used to quantitate the unlabeled compound by strict isotope dilution procedures. Therefore, the unlabeled 1,2,3,7,8,9-HxCDD is quantitated using the average of the responses of the labeled analogs of the other two 2,3,7,8-substituted HxCDD's, 1,2,3,4,7,8-HxCDD and 1,2,3,6,7,8-HxCDD. As a result, the concentration of the unlabeled 1,2,3,7,8,9-HxCDD is corrected for the average recovery of the other two HxCDD's.

16.1.3 Any peaks representing non-2,3,7,8-substituted dioxins or furans are quantitated using an average of the response factors from all of the labeled 2,3,7,8-isomers in the same level of chlorination.

16.2 Internal standard—compute the concentrations of the ^{13}C-labeled analogs and the ^{37}C-labeled cleanup standard in the extract using the response factors determined from calibration data (section 7.6) and the following equation:

$$C_{ex}(ng/mL) = \frac{(A_s^1 + A_s^2)\, C_{is}}{(A_{is}^1 + A_{is}^2)\, RF}$$

Where:

C_{ex} is the concentration of the compound in the extract and the other terms are as defined in section 7.6.1. Note: There is only one m/z for the ^{37}Cl-labeled standard.)

16.3 The concentration of the unlabeled compound in the solid phase of the sample is computed using the concentration of the compound in the extract and the weight of the solids (section 10), as follows:

$$\text{Concentration in solid (ng/Kg)} = \frac{(C_{ex} \times V_{ex})}{(W_s}$$

Where:

C_{ex} is the concentration of the compound in the extract.

V_{ex} is the extract volume in mL.

W_s is the sample weight in Kg.

16.4 The concentration of the unlabled compound in the aqueous phase of the sample is computed using the concentration of the compound in the extract and the volume of water extracted (section 10.3), as follows:

$$\text{Concentration in aqueous phase (pg/L)} = \frac{(C_{ex} \times V_{ex})}{V_s}$$

Where:

C_{ex} is the concentration of the compound in the extract.

V_{ex} is the extract volume in mL.

V_s is the sample volume in liters.

16.5 If the SICP areas at the quantitation m/z's for any compound exceed the calibration range of the system, a smaller sample aliquot is extracted.

16.5.1 For aqueous samples containing one percent solids or less, dilute 100 mL, 10 mL, etc., of sample to 1 liter with reagent water and extract per section 11.

16.5.2 For samples containing greater than one percent solids, extract an amount of sample equal to 1/10, 1/100, etc., of the amount determined in Section 10.1.3. Extract per section 10.4.

16.5.3 If a smaller sample size will not be representative of the entire sample, dilute the sample extract by a factor of 10, adjust the concentration of the instrument internal standard to 100 pg/μL in the extract, and analyze an aliquot of this diluted extract by the internal standard method.

16.6 Results are reported to three significant figures for the unlabeled and labeled isomers found in all standards, blanks, and samples. For aqueous samples, the units are pg/L; for samples containing greater than one percent solids (soils, sediments, filter cake, compost), the units are ng/Kg based on the dry weight of the sample.

16.6.1 Results for samples which have been diluted are reported at the least dilute level at which the areas at the quantitation/m/z's are within the calibration range (section 16.5).

16.6.2 For unlabeled compounds having a labeled analog, results are reported at the least dilute level at which the area at the quantitation m/z is within the calibration range (section 16.5) and the labeled compound recovery is within the normal range for the method (section 17.4).

16.6.3 Additionally, the total concentrations of all isomers in an individual level of chlorination (i.e., total TCDD, total PeCDD, etc.) are reported to three significant figures in units of pg/L, for both dioxins and furans. The total or ng/Kg concentration in each level of chlorination is the sum of the concentrations of all isomers identified in that level, including any non-2,3,7,8-substituted isomers.

17. Analysis of Complex Samples

17.1 Some samples may contain high levels (>100 ng/L; >1000 ng/Kg) of the compounds of interest, interfering compounds, and/or polymeric materials. Some extracts will not concentrate to 10 μL (section 11); others may overload the GC column and/or mass spectrometer.

17.2 Analyze a smaller aliquot of the sample (Section 16.4) when the extract will not concentrate to 20 μL after all cleanup procedures have been exhausted.

17.3 Recovery of labeled compound spiking standards—In most samples, recoveries of the labeled compound spiking standards will be similar to those from reagent water or from the alternate matrix (section 6.6). If recovery is outside of the 25–150% range, a diluted sample (section 16.4) shall be analyzed. If the recoveries of the labeled compound spiking standards in the diluted sample are outside of the limits (per the criteria above), then the verification standard (section 14.3) shall be analyzed and calibration verified (section 14.3.4). If the calibration cannot be verified, a new calibration must be performed and the original sample extract reanalyzed. If the calibration is verified and the diluted sample does not meet the limits for labeled compound recovery, then the method does not apply to the sample being analyzed and the result may not be reported for regulatory compliance purposes.

18. Method Performance

The performance specifications in this method are based on the analyses of more than 400 samples, representing matrices from at least five industrial categories. These specifications will be updated periodically as more data are received, and each time the procedures in the method are revised.

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TABLE 1.—POLYCHLORINATED DIBENZODIOXINS AND FURANS DETERMINED BY ISOTOPE DILUTION AND INTERNAL STANDARD HIGH RESOLUTION GAS CHROMATOGRAPHY (HRGC)/HIGH RESOLUTION MASS SPECTROMETRY (HRMS)

PCDDs/PCDFs [1] isomer/congener	CAS registry	Labeled analog	CAS registry
2,3,7,8-TCDD	1746-01-6	$^{13}C_{12}$-2,3,7,8-TCDD	76523-40-5
		$^{37}Cl_4$-2,3,7,8-TCDD	85508-50-5
Total-TCDD	41903-57-5		
2,3,7,8-TCDF	51207-31-9	$^{13}C_{12}$-2,3,7,8-TCDF	89059-46-1
Total-TCDF	55722-27-5		
1,2,3,7,8-PeCDD	40321-76-4	$^{13}C_{12}$-1,2,3,7,8-PeCDD	109719-79-1
Total-PeCDD	36088-22-9		
1,2,3,7,8-PeCDF	57117-41-6	$^{13}C_{12}$-1,2,3,7,8-PeCDF	109719-77-9
2,3,4,7,8-PeCDF	57117-31-4	$^{13}C_{12}$-2,3,4,7,8-PeCDF	116843-02-8
Total-PeCDF	30402-15-4		
1,2,3,4,7,8-HxCDD	39227-28-6	$^{13}C_{12}$-1,2,3,4,7,8-HxCDD	109719-80-4
1,2,3,6,7,8-HxCDD	57653-85-7	$^{13}C_{12}$-1,2,3,6,7,8-HxCDD	109719-81-5
1,2,3,7,8,9-HxCCD	19408-74-3	$^{13}C_{12}$-1,2,3,7,8,9-HxCDD [2]	109719-82-6
Total-HxCDD	34465-4608		
1,2,3,4,7,8-HxCDF	70648-26-9	$^{13}C_{12}$-1,2,3,4,7,8-HxCDF	114423-98-2
1,2,3,6,7,8-HxCDF	57117-44-9	$^{13}C_{12}$-1,2,3,6,7,8-HxCDF	116843-03-9
1,2,3,7,8,9-HxCDF	72918-21-9	$^{13}C_{12}$-1,2,3,7,8,9-HxCDF	116843-04-0
2,3,4,6,7,8-HxCDF	60851-34-5	$^{13}C_{12}$-2,3,4,6,7,8-HxCDF	116843-05-1
Total-HxCDF	55684-94-1		
1,2,3,4,6,7,8-HpCDD	35822-46-9	$^{13}C_{12}$-1,2,3,4,6,7,8-HpCDD	109719-83-7
Total-HpCDD	37871-00-4		
1,2,3,4,6,7,8-HpCDF	67562-39-4	$^{13}C_{12}$-1,2,3,4,6,7,8-HpCDF	109719-84-8
1,2,3,4,7,8,9-HpCDF	55673-89-7	$^{13}C_{12}$-1,2,3,4,7,8,9-HpCDF	109719-94-0
Total-HpCDF	38998-75-3		
OCDD	3268-87-9	$^{13}C_{12}$-OCDD	114423-97-1
OCDF	39001-02-0	None	

[1] Polychlorinated dioxins and furans: TCDD = Tetrachlorodiabenzo-p-dioxin; PeCDD = Pentachlorodibenzo-p-dioxin; HxCDD = Hexachlorodibenzo-p-dioxin; HpCDD = Heptachlorodibenzo-p-dioxin; OCDD = Octachlorodibenzo-p-dioxin; TCDF = Tetrachlorodibenzofuran; PeCDF = Pentachlorodibenzofuran; HxCDF = Hexachlorodibenzofuran; HpCDF = Heptachlorodibenzofuran; OCDF = Octachlorodibenzofuran.

[2] Labeled analog is used as an internal standard and therefore is not used for quantitation of the native compound.

TABLE 2.—RETENTION TIMES AND MINIMUM LEVELS FOR PCDDS AND PCDFS

Compound	Retention time reference	Relative retention time	Minimum level [1]		
			Water pg/L ppq	Solid ng/kg ppt	Extract pg/μL ppb
Compounds using $^{13}C_{12}$-1,2,3,4-TCCD as internal standard—					
Native Compounds:					
2,3,7,8-TCDF	$^{13}C_{12}$-2,3,7,8-TCDF	0.993–1.009	10	1	0.5
2,3,7,8-TCDD	$^{13}C_{12}$-2,3,7,8-TCDD	0.993–1.009	10	1	0.5
1,2,3,7,8-PeCDF	$^{13}C_{12}$-1,2,3,7,8-PeCDF	0.918–1.076	50	5	2.5
2,3,4,7,8-PeCDF	$^{13}C_{12}$-2,3,4,7,8-PeCDF	0.999–1.001	50	5	2.5
1,2,3,7,8-PeCDD	$^{13}C_{12}$-1,2,3,7,8-PeCDD	0.987–1.016	50	5	2.5
Labeled Compounds:					
$^{13}C_{12}$-2,3,7,8-TCDF	$^{13}C_{12}$-1,2,3,4-TCDD	0.931–0.994			
$^{13}C_{12}$-1,2,3,4-TCDD	$^{13}C_{12}$-1,2,3,4-TCDD	1.000–1.000			
$^{13}C_{12}$-2,3,7,8-TCDD	$^{13}C_{12}$-1,2,3,4-TCDD	0.993–1.036			
$^{37}Cl_4$-2,3,7,8-TCDD	$^{13}C_{12}$-1,2,3,4-TCDD	1.002–1.013			
$^{13}C_{12}$-1,2,3,7,8-PeCDF	$^{13}C_{12}$-1,2,3,4-TCDD	1.091–1.371			
$^{13}C_{12}$-2,3,4,7,8-PeCDF	$^{13}C_{12}$-1,2,3,4-TCDD	1.123–1.408			
$^{13}C_{12}$-1,2,3,7,8-PeCDD	$^{13}C_{12}$-1,2,3,4-TCDD	1.134–1.428			
Compounds using $^{13}C_{12}$-1,2,3,7,8,9-HxCDD as internal standard—					
Native Compounds:					
1,2,3,4,7,8-HxCDF	$^{13}C_{12}$-1,2,3,4,7,8-HxCDF	0.986–1.015	50	5	2.5
1,2,3,6,7,8-HxCDF	$^{13}C_{12}$-1,2,3,6,7,8-HxCDF	0.973–1.025	50	5	2.5
1,2,3,7,8,9-HxCDF	$^{13}C_{12}$-1,2,3,7,8,9-HxCDF	0.937–1.068	50	5	2.5
2,3,4,6,7,8-HxCDF	$^{13}C_{12}$-2,3,4,6,7,8-HxCDF	0.999–1.001	50	5	2.5
1,2,3,4,7,8-HxCDD	$^{13}C_{12}$-1,2,3,4,7,8-HxCDD	0.999–1.001	50	5	2.5
1,2,3,6,7,8-HxCDD	$^{13}C_{12}$-1,2,3,6,7,8-HxCDD	0.992–1.009	50	5	2.5
1,2,3,7,8,9-HxCDD	$^{13}C_{12}$-1,2,3,6,7,8-HxCDD	0.986–1.016	50	5	2.5
1,2,3,4,6,7,8-HpCDF	$^{13}C_{12}$-1,2,3,4,6,7,8-HpCDF	0.930–1.022	50	5	2.5
1,2,3,4,6,7,8-HpCDD	$^{13}C_{12}$-1,2,3,4,6,7,8-HpCDD	0.986–1.016	50	5	2.5
1,2,3,4,7,8,9-HpCDF	$^{13}C_{12}$-1,2,3,4,7,8,9-HpCDF	0.896–1.079	50	5	2.5
OCDD	$^{13}C_{12}$-OCDD	0.996–1.005	100	10	5.0
OCDF	$^{13}C_{12}$-OCDD	0.995–1.013	100	10	5.0
Labeled Compounds:					
$^{13}C_{12}$-1,2,3,4,7,8-HxCDF	$^{13}C_{12}$-1,2,3,7,8,9-HxCDD	0.947–0.992			
$^{13}C_{12}$-1,2,3,6,7,8-HxCDF	$^{13}C_{12}$-1,2,3,7,8,9-HxCDD	0.940–1.006			
$^{13}C_{12}$-1,2,3,7,8,9-HxCDF	$^{13}C_{12}$-1,2,3,7,8,9-HxCDD	0.993–1.017			
$^{13}C_{12}$-2,3,4,6,7,8-HxCDF	$^{13}C_{12}$-1,2,3,7,8,9-HxCDD	0.971–1.000			
$^{13}C_{12}$-1,2,3,4,7,8-HxCDD	$^{13}C_{12}$-1,2,3,7,8,9-HxCDD	0.974–1.002			
$^{13}C_{12}$-1,2,3,6,7,8-HxCDD	$^{13}C_{12}$-1,2,3,7,8,9-HxCDD	0.975–1.006			
$^{13}C_{12}$-1,2,3,7,8,9-HxCDD	$^{13}C_{12}$-1,2,3,7,8,9-HxCDD	1.000–1.000			
$^{13}C_{12}$-1,2,3,4,6,7,8-HpCDF	$^{13}C_{12}$-1,2,3,7,8,9-HxCDD	0.953–1.172			
$^{13}C_{12}$-1,2,3,4,6,7,8-HpCDD	$^{13}C_{12}$-1,2,3,7,8,9-HxCDD	1.023–1.125			
$^{13}C_{12}$-1,2,3,4,7,8,9-HpCDF	$^{13}C_{12}$-1,2,3,7,8,9-HxCDD	1.024–1.148			
$^{13}C_{12}$-OCDD	$^{13}C_{12}$-1,2,3,7,8,9-HxCDD	1.050–1.275			

[1] Level at which the analytical system will give acceptable SICP and calibration.

TABLE 3.—DESCRIPTORS, MASSES, M/Z TYPES, AND ELEMENTAL COMPOSITIONS OF THE CDDS AND CDFS [1]

Descriptor No.	Accurate m/z [2]	m/z Type	Elemental composition	Compound [3]	Primary m/z?
1	292.9825	Lock	C_7F_{11}	PFK	
	303.9016	M	$C_{12}H_4{}^{35}Cl_4O$	TCDF	Yes.
	305.8987	M+2	$C_{12}H_4{}^{35}Cl_3{}^{37}ClO$	TCDF	
	315.9419	M	$^{13}C_{12}H_4{}^{35}Cl_4O$	TCDF [4]	Yes.
	317.9389	M+2	$^{13}C_{12}H_4{}^{35}Cl_3{}^{37}ClO$	TCDF [4]	
	319.8965	M	$C_{12}H_4{}^{35}Cl_4O_2$	TCDD	Yes.
	321.8936	M+2	$C_{12}H_4{}^{35}Cl_3{}^{37}ClO_2$	TCDD	
	327.8847	M	$C_{12}H_4{}^{37}Cl_4O_2$	TCDD [5]	
	330.9792	QC	C_7F_{13}	PFK	
	331.9368	M	$^{13}C_{12}H_4{}^{35}Cl_4O_2$	TCDD [4]	Yes.
	333.9339	M+2	$^{13}C_{12}H_4{}^{35}Cl_3{}^{37}ClO_2$	TCDD [4]	
	375.8364	M+2	$C_{12}H_4{}^{35}Cl_5{}^{37}ClO$	HxCDPE	
2	339.8597	M+2	$C_{12}H_3{}^{35}Cl_4{}^{37}ClO$	PeCDF	Yes.
	341.8567	M+4	$C_{12}H_3{}^{35}Cl_3{}^{37}Cl_2O$	PeCDF	
	351.9000	M+2	$^{13}C_{12}H_3{}^{35}Cl_4{}^{37}ClO$	PeCDF [4]	Yes.
	353.8970	M+4	$^{13}C_{12}H_3{}^{35}Cl_3{}^{37}Cl_2O$	PeCDF [4]	
	354.9792	Lock	C_9F_{13}	PFK	
	355.8546	M+2	$C_{12}H_3{}^{35}Cl_4{}^{37}ClO_2$	PeCDD	Yes.
	357.8516	M+4	$C_{12}H_3{}^{35}Cl_3{}^{37}Cl_2O_2$	PeCDD	
	367.8949	M+2	$^{13}C_{12}H_3{}^{35}Cl_4{}^{37}ClO_2$	PeCDD [4]	Yes.
	369.8919	M+4	$^{13}C_{12}H_3{}^{35}Cl_3{}^{37}Cl_2O_2$	PeCDD [4]	
	409.7974	M+2	$C_{12}H_3{}^{35}Cl_6{}^{37}ClO$	HpCDPE	
3	373.8208	M+2	$C_{12}H_2{}^{35}Cl_5{}^{37}ClO$	HxCDF	Yes.
	375.8178	M+4	$C_{12}H_2{}^{35}Cl_4{}^{37}Cl_2O$	HxCDF	

TABLE 3.—DESCRIPTORS, MASSES, M/Z TYPES, AND ELEMENTAL COMPOSITIONS OF THE CDDS AND CDFS [1]—Continued

Descriptor No.	Accurate m/z [2]	m/z Type	Elemental composition	Compound [3]	Primary m/z?
	383.8639	M	$^{13}C_{12}$ H_2 $^{35}Cl_6$ O	HxCDF [4]	Yes.
	385.8610	M+2	$^{13}C_{12}$ H_2 $^{35}Cl_5$ ^{37}Cl O	HxCDF [4]	
	389.8157	M+2	C_{12} H_2 $^{35}Cl_5$ ^{37}Cl O_2	HxCDD	Yes.
	391.8127	M+4	C_{12} H_2 $^{35}Cl_4$ ^{37}Cl O_2	HxCDD	
	392.9760	Lock	C_9 F_{15}	PFK	
	401.8559	M+2	$^{13}C_{12}$ H_2 $^{35}Cl_5$ ^{37}Cl O_2	HxCDD [4]	Yes.
	403.8529	M+4	$^{13}C_{12}$ H_2 $^{35}Cl_4$$^{37}Cl_2$ O_2	HxCDD [4]	
	430.9729	QC	C_9 F_{13}	PFK	
	445.7555	M+4	C_{12} H_2 $^{35}Cl_6$ $^{37}Cl_2$ O	OCDPE	
4	407.7818	M+2	C_{12} H $^{35}Cl_6$ ^{37}Cl O	HpCDF	Yes.
	409.7789	M+4	C_{12} H $^{35}Cl_5$ $^{37}Cl_2$ O	HpCDF	
	417.8253	M	$^{13}C_{12}$ H $^{35}Cl_7$ O	HpCDF [4]	Yes.
	419.8220	M+2	$^{13}C_{12}$ H $^{35}Cl_6$ ^{37}Cl O	HpCDF [4]	
	423.7766	M+2	C_{12} H $^{35}Cl_6$ ^{37}Cl O_2	HpCDD	Yes.
	425.7737	M+4	C_{12} H $^{35}Cl_5$ $^{37}Cl_2$ O_2	HpCDD	
	430.9729	Lock	C_9 F_{17}	PFK	
	435.8169	M+2	$^{13}C_{12}$ H $^{35}Cl_6$ ^{37}Cl O_2	HpCDD [4]	Yes.
	437.8140	M+4	$^{13}C_{12}$ H $^{35}Cl_5$ $^{37}Cl_2$ O_2	HpCDD [4]	
	479.7165	M+4	C_{12} H $^{35}Cl_7$ $^{37}Cl_2$ O	NCDPE	
5	441.7428	M+2	C_{12} $^{35}Cl_7$ ^{37}Cl O	OCDF	Yes.
	442.9728	Lock	C_{10} F_{17}	PFK	
	443.7399	M+4	C_{12} $^{35}Cl_6$ $^{37}Cl_2$ O	OCDF	
	457.7377	M+2	C_{12} $^{35}Cl_7$ ^{37}Cl O_2	OCDD	Yes.
	459.7348	M+4	C_{12} $^{35}Cl_6$ $^{37}Cl_2$ O_2	OCDD	
	469.7779	M+2	$^{13}C_{12}$ $^{35}Cl_7$ ^{37}Cl O_2	OCDD [4]	Yes.
	471.7750	M+4	$^{13}C_{12}$ $^{35}Cl_6$ $^{37}Cl_2$ O_2	OCDD [4]	
	513.6775	M+4	C_{12} $^{35}Cl_6$ $^{37}Cl_2$ O	DCDPE	

[1] From Reference 5.
[2] Nuclidic masses used: H=1.007825; O=15.994915; C=12.00000; ^{35}Cl=34.968853; ^{13}C=13.003355; ^{37}Cl=36.965903; F=18.9984.
[3] Compound abbreviations: Chlorinated dibenzo-p-dioxins—TCDD=Tetrachlorodibenzo-p-dioxin; PeCDD=Pentachlorodibenzo-p-dioxin; HxCDD=Hexachlorodibenzo-p-dioxin; HpCDD=Heptachlorodibenzo-p-dioxin; OCDD=Octachlorodibenzo-p-dioxin; Chlorinated diphenyl ethers—HxCDPE=Hexachlorodiphenyl ether; HpCDPE=Heptachlorodiphenyl ether; OCDPE=Octachlorodiphenyl ether; NCDPE=Nonachlorodiphenyl ether; DCDPE=Decachlorodiphenyl ether; Chlorinated dibenzofurans—TCDF=Tetrachlorodibenzofuran; PeCDF=Pentachlorodibenzofuran; HxCDF=Hexachlorodibenzofuran; HpCDF=Heptachlorodibenzofuran; Lock mass and QC compound—PFK=Perfluorokerosene.
[4] Labeled compound.
[5] There is only one m/z for $^{37}Cl_4$-2,3,7,8-TCDD cleanup standard.

TABLE 3A.—THEORETICAL ION ABUNDANCE RATIOS AND CONTROL LIMITS

No. of chlorine atoms	m/z's Forming ratio	Theoretical ratio	Control limits [1]	
			Lower	Upper
4 [2]	M/M+2	0.77	0.65	0.89
5	M+2/M+4	1.55	1.32	1.78
6	M+2/M+4	1.24	1.05	1.43
6 [3]	M/M+2	0.51	0.43	0.59
7	M+2/M+4	1.05	0.88	1.20
7 [4]	M/M+2	0.44	0.37	0.51
8	M+2/M+4	0.89	0.76	1.02

[1] Represent ±15% windows around the theoretical ion abundance ratios.
[2] Does not apply to $^{37}Cl_4$-2,3,7,8-TCDD (cleanup standard).
[3] Used for ^{13}C-HxCDF only.
[4] Used for ^{13}C-HpCDF only.

TABLE 4.—CONCENTRATIONS OF SOLUTIONS CONTAINING LABELED AND UNLABELED PCDDS AND PCDFS—STOCK AND SPIKING SOLUTIONS

Compound	Labeled compound stock solution [1] (ng/mL)	Labeled compound spiking solution [2] (ng/mL)	PAR stock solution [3] (ng/mL)	Cleanup standard spiking solution [4] (ng/mL)	Internal standard spiking solution [5] (ng/mL)
Native CDDs and CDFs:					
2,3,7,8-TCDD			40		
2,3,7,8-TCDF			40		
1,2,3,7,8-PeCDD			200		
1,2,3,7,8-PeCDF			200		
2,3,4,7,8-PeCDF			200		
1,2,3,4,7,8-HxCDD			200		
1,2,3,6,7,8-HxCDD			200		
1,2,3,7,8,9-HxCDD			200		
1,2,3,4,7,8-HxCDF			200		
1,2,3,6,7,8-HxCDF			200		
1,2,3,7,8,9-HxCDF			200		
2,3,4,6,7,8-HxCDF			200		
1,2,3,4,6,7,8-HpCDD			200		

TABLE 4.—CONCENTRATIONS OF SOLUTIONS CONTAINING LABELED AND UNLABELED PCDDS AND PCDFS—STOCK AND SPIKING SOLUTIONS—Continued

Compound	Labeled compound stock solution [1] (ng/mL)	Labeled compound spiking solution [2] (ng/mL)	PAR stock solution [3] (ng/mL)	Cleanup standard spiking solution [4] (ng/mL)	Internal standard spiking solution [5] (ng/mL)
1,2,3,4,6,7,8-HpCDF			200		
1,2,3,4,7,8,9-HpCDF			200		
OCDD			400		
OCDF			400		
Labeled CDDs and CDFs:					
$^{13}C_{12}$-2,3,7,8-TCDD	100	2			
$^{13}C_{12}$-2,3,7,8-TCDF	100	2			
$^{13}C_{12}$-1,2,3,7,8-PeCDD	100	2			
$^{13}C_{12}$-1,2,3,7,8-PeCDF	100	2			
$^{13}C_{12}$-2,3,4,7,8-PeCDF	100	2			
$^{13}C_{12}$-1,2,3,4,7,8-HxCDD	100	2			
$^{13}C_{12}$-1,2,3,6,7,8-HxCDD	100	2			
$^{13}C_{12}$-1,2,3,4,7,8-HxCDF	100	2			
$^{13}C_{12}$-1,2,3,6,7,8-HxCDF	100	2			
$^{13}C_{12}$-1,2,3,7,8,9-HxCDF	100	2			
$^{13}C_{12}$-2,3,4,6,7,8-HxCDF	100	2			
$^{13}C_{12}$-1,2,3,4,6,7,8-HpCDD	100	2			
$^{13}C_{12}$-1,2,3,4,6,7,8-HpCDF	100	2			
$^{13}C_{12}$-1,2,3,4,7,8,9-HpCDF	100	2			
$^{13}C_{12}$-OCDD	200	4			
Cleanup Standard:					
$^{37}Cl_4$-2,3,7,8-TCDD				0.8	
Internal Standards:					
$^{13}C_{12}$-1,2,3,4-TCDD					200
$^{13}C_{12}$-1,2,3,7,8,9-HxCDD					200

[1] Section 6.10—prepared in nonane and diluted to prepare spiking solution.
[2] Section 10.3.2—prepared from stock solution daily.
[3] Precision and Recovery (PAR) standard, section 6.14—prepared in nonane and diluted to prepare spiking solution in section 10.3.4.
[4] Section 6.11—prepared in nonane.
[5] Section 6.12—prepared in nonane.

TABLE 4.—CONCENTRATIONS OF SOLUTIONS CONTAINING LABELED AND UNLABELED PCDDS AND PCDFS—CALIBRATION AND VERIFICATION SOLUTIONS

Compound	CS1 (ng/mL)	CS2 (ng/ml)	VER [1] CS3 (ng/mL)	CS4 (ng/mL)	CS5 (ng/mL)
Native CDDs and CDFs:					
2,3,7,8-TCDD	0.5	2	10	40	200
2,3,7,8-TCDF	0.5	2	10	40	200
1,2,3,7,8-PeCDD	2.5	10	50	200	1,000
1,2,3,7,8-PeCDF	2.5	10	50	200	1,000
2,3,4,7,8-PeCDF	2.5	10	50	200	1,000
1,2,3,4,7,8-HxCDD	2.5	10	50	200	1,000
1,2,3,6,7,8-HxCDD	2.5	10	50	200	1,000
1,2,3,7,8,9-HxCDD	2.5	10	50	200	1,000
1,2,3,4,7,8-HxCDF	2.5	10	50	200	1,000
1,2,3,6,7,8-HxCDF	2.5	10	50	200	1,000
1,2,3,7,8,9-HxCDF	2.5	10	50	200	1,000
2,3,4,6,7,8-HxCDF	2.5	10	50	200	1,000
1,2,3,4,6,7,8-HpCDD	2.5	10	50	200	1,000
1,2,3,4,6,7,8-HpCDF	2.5	10	50	200	1,000
1,2,3,4,7,8,9-HpCDF	2.5	10	50	200	1,000
OCDD	5.0	20	100	400	2,000
OCDF	5.0	20	100	400	2,000
Labeled CDDs and CDFs:					
$^{13}C_{12}$-2,3,7,8-TCDD	100	100	100	100	100
$^{13}C_{12}$-2,3,7,8-TCDF	100	100	100	100	100
$^{13}C_{12}$-1,2,3,7,8-PeCDD	100	100	100	100	100
$^{13}C_{12}$-1,2,3,7,8-PeCDF	100	100	100	100	100
$^{13}C_{12}$-2,3,4,7,8-PeCDF	100	100	100	100	100
$^{13}C_{12}$-1,2,3,4,7,8-HxCDD	100	100	100	100	100
$^{13}C_{12}$-1,2,3,6,7,8-HxCDD	100	100	100	100	100
$^{13}C_{12}$-1,2,3,4,7,8-HxCDF	100	100	100	100	100
$^{13}C_{12}$-1,2,3,6,7,8-HxCDF	100	100	100	100	100
$^{13}C_{12}$-1,2,3,7,8,9-HxCDF	100	100	100	100	100
$^{13}C_{12}$-2,3,4,6,7,8-HxCDF	100	100	100	100	100
$^{13}C_{12}$-1,2,3,4,6,7,8-HpCDD	100	100	100	100	100
$^{13}C_{12}$-1,2,3,4,6,7,8-HpCDF	100	100	100	100	100
$^{13}C_{12}$-1,2,3,4,7,8,9-HpCDF	100	100	100	100	100
$^{13}C_{12}$-OCDD	200	200	200	200	200

TABLE 4.—CONCENTRATIONS OF SOLUTIONS CONTAINING LABELED AND UNLABELED PCDDS AND PCDFS—CALIBRATION AND VERIFICATION SOLUTIONS—Continued

Compound	CS1 (ng/mL)	CS2 (ng/ml)	VER [1] CS3 (ng/mL)	CS4 (ng/mL)	CS5 (ng/mL)
Cleanup Standard:					
$^{37}Cl_4$-2,3,7,8-TCDD	0.5	2	10	40	200
Internal Standards:					
$^{13}C_{12}$-1,2,3,4-TCDD	100	100	100	100	100
$^{13}C_{12}$-1,2,3,7,8,9-HxCDD	100	100	100	100	100

[1] Section 14.3—calibration verification (VER) solution.

TABLE 5.—GC RETENTION TIME WINDOW DEFINING STANDARD MIXTURES AND ISOMER SPECIFICITY TEST STANDARD MIXTURES

Congener	First eluted	Last eluted
DB-5 Column GC Rentention Time Window Defining Standard (Section 6.15)		
TCDF	1,3,6,8-	1,2,8,9-
TCDD	1,3,6,8-	1,2,8,9-
PeCDF	1,3,4,6,8-	1,2,3,8,9-
PeCDD	1,2,4,7,9-	1,2,3,8,9-
HxCDF	1,2,3,4,6,8-	1,2,3,4,8,9-

TABLE 5.—GC RETENTION TIME WINDOW DEFINING STANDARD MIXTURES AND ISOMER SPECIFICITY TEST STANDARD MIXTURES—Continued

Congener	First eluted	Last eluted
HxCDD	1,2,4,6,7,9-	1,2,3,4,6,7-
HpCDF	1,2,3,4,6,7,8-	1,2,3,4,7,8,9-
HpCDD	1,2,3,4,6,7,9-	1,2,3,4,6,7,8-
DB-5 TCDD Isomer Specificity Test Standard (Section 6.16.1)		
	1,2,3,4-TCDD	1,2,3,7-TCDD
	1,2,7,8-TCDD	1,2,3,8-TCDD

TABLE 5.—GC RETENTION TIME WINDOW DEFINING STANDARD MIXTURES AND ISOMER SPECIFICITY TEST STANDARD MIXTURES—Continued

Congener	First eluted	Last eluted
	1,4,7,8-TCDD	2,3,7,8-TCDD
DB-225 Column TCDF Isomer Specificity Test Standard (Section 6.16.2)		
	2,3,4,7-TCDF	
	2,3,7,8-TCDF	
	1,2,3,9-TCDF	

TABLE 6.—REFERENCE COMPOUNDS FOR QUANTITATION OF NATIVE AND LABELED PCDDS AND PCDFS

Native PCDDs and PCDFs	Reference compound	Labeled PCDDs and PCDFs	Reference compound
2,3,7,8-TCDD	$^{13}C_{12}$-2,3,7,8-TCDD	$^{13}C_{12}$-2,3,7,8-TCDD	$^{13}C_{12}$-1,2,3,4-TCDD
2,3,7,8-TCDF	$^{13}C_{12}$-2,3,7,8-TCDF	$^{13}C_{12}$-2,3,7,8-TCDF	$^{13}C_{12}$-1,2,3,4-TCDD
1,2,3,7,8-PeCDD	$^{13}C_{12}$-1,2,3,7,8-PeCDD	$^{13}C_{12}$-1,2,3,7,8-PeCDD	$^{13}C_{12}$-1,2,3,4-TCDD
1,2,3,7,8-PeCDF	$^{13}C_{12}$-1,2,3,7,8-PeCDF	$^{13}C_{12}$-1,2,3,7,8-PeCDD	$^{13}C_{12}$-1,2,3,4-TCDD
2,3,4,7,8-PeCDF	$^{13}C_{12}$-2,3,4,7,8-PeCDF	$^{13}C_{12}$-2,3,4,7,8-PeCDF	$^{13}C_{12}$-1,2,3,4-TCDD
1,2,3,4,7,8-HxCDD	$^{13}C_{12}$-1,2,3,4,7,8-HxCDD	$^{13}C_{12}$-1,2,3,4,7,8-HxCDD	$^{13}C_{12}$-1,2,3,7,8,9-HxCDD
1,2,3,6,7,8-HxCDD	$^{13}C_{12}$-1,2,3,6,7,8-HxCDD	$^{13}C_{12}$-1,2,3,6,7,8-HxCDD	$^{13}C_{12}$-1,2,3,7,8,9-HxCDD
1,2,3,7,8,9-HxCDD	(1)	$^{13}C_{12}$-1,2,3,7,8,9-HxCDD	$^{13}C_{12}$-1,2,3,7,8,9-HxCDD
1,2,3,4,7,8-HxCDF	$^{13}C_{12}$-1,2,3,4,7,8-HxCDF	$^{13}C_{12}$-1,2,3,4,7,8-HxCDF	$^{13}C_{12}$-1,2,3,7,8,9-HxCDD
1,2,3,6,7,8-HxCDF	$^{13}C_{12}$-1,2,3,6,7,8-HxCDF	$^{13}C_{12}$-1,2,3,6,7,8-HxCDF	$^{13}C_{12}$-1,2,3,7,8,9-HxCDD
1,2,3,7,8,9-HxCDF	$^{13}C_{12}$-1,2,3,7,8,9-HxCDF	$^{13}C_{12}$-1,2,3,7,8,9-HxCDF	$^{13}C_{12}$-1,2,3,7,8,9-HxCDD
2,3,4,6,7,8-HxCDF	$^{13}C_{12}$-2,3,4,6,7,8-HxCDF	$^{13}C_{12}$-2,3,4,6,7,8-HxCDF	$^{13}C_{12}$-1,2,3,7,8,9-HxCDD
1,2,3,4,6,7,8-HpCDD	$^{13}C_{12}$-1,2,3,4,6,7,8-HpCDD	$^{13}C_{12}$-1,2,3,4,6,7,8-HpCDD	$^{13}C_{12}$-1,2,3,7,8,9-HxCDD
1,2,3,4,6,7,8-HpCDF	$^{13}C_{12}$-1,2,3,4,6,7,8-HpCDF	$^{13}C_{12}$-$_{11}$1,2,3,4,6,7,8-HpCDF	$^{13}C_{12}$-1,2,3,7,8,9-HxCDD
1,2,3,4,7,8,9-HpCDF	$^{13}C_{12}$-1,2,3,4,7,8,9-HpCDF	$^{13}C_{12}$-1,2,3,4,7,8,9-HpCDF	$^{13}C_{12}$-1,2,3,7,8,9-HxCDD
OCDD	$^{13}C_{12}$-OCDD	$^{13}C_{12}$-OCDD	$^{13}C_{12}$-1,2,3,7,8,9-HxCDD
OCDF	$^{13}C_{12}$-OCDD	$^{37}C_{14}$-2,3,7,8-TCDD	$^{13}C_{12}$-1,2,3,4-TCDD

[1] 1,2,3,7,8,9-HxCDD is quantified using the average responses for the $^{13}C_{12}$-1,2,3,4,7,8-HxCDD and $^{13}C_{12}$-1,2,3,6,7,8-HxCDD.

TABLE 7.—ACCEPTANCE CRITERIA FOR PERFORMANCE TESTS

Compound	Test conc. [1] (ng/mL)	IPR [2] s (ng/mL)	IPR [2] X (ng/mL)	OPR [2] (ng/mL)	VER (ng/mL)
2,3,7,8-TCDD	10	1.5	3.9-20.6	5.9-14.2	8.6-11.6
2,3,7,8-TCDF	10	2.0	3.2-26.8	6.6-12.7	8.8-11.3
1,2,3,7,8-PeCDD	50	4.2	47.5-50.5	35.6-58.1	44.2-56.6
1,2,3,7,8-PeCDF	50	4.6	44.2-54.0	36.7-57.3	46.7-53.5
2,3,4,7,8-PeCDF	50	4.2	45.3-50.3	37.8-56.9	47.2-53.0
1,2,3,4,7,8-HxCDD	50	5.5	30.9-70.2	35.1-60.4	37.6-66.5
1,2,3,6,7,8-HxCDD	50	5.5	33.2-65.9	33.3-64.4	39.7-63.0
1,2,3,7,8,9-HxCDD	50	9.5	22.7-90.9	31.8-61.2	42.6-58.7
1,2,3,4,7,8-HxCDF	50	6.3	25.2-92.0	36.9-58.8	41.5-60.2
1,2,3,6,7,8-HxCDF	50	4.0	39.1-54.4	34.8-58.8	40.5-61.7
1,2,3,7,8,9-HxCDF	50	4.0	37.9-62.9	37.1-55.7	45.7-54.5
2,3,4,6,7,8-HxCDF	50	5.0	27.4-85.5	35.7-60.0	44.1-56.7
1,2,3,4,6,7,8-HpCDD	50	6.4	27.4-76.5	37.5-56.8	41.6-60.2
1,2,3,4,6,7,8-HpCDF	50	3.6	39.5-62.1	37.4-60.6	43.1-58.0
1,2,3,4,7,8,9-HpCDF	50	4.2	36.6-64.9	36.9-60.6	43.6-57.3
OCDD	100	13.0	69.4-154.6	75.6-118.7	87.5-114.4
OCDF	100	45.0	46.1-139.8	69.5-127.0	83.9-119.2

TABLE 7.—ACCEPTANCE CRITERIA FOR PERFORMANCE TESTS—Continued

Compound	Test conc. (1) (ng/mL)	IPR 2		OPR (2) (ng/mL)	VER (ng/mL)
		s (ng/mL)	X (ng/mL)		
$^{13}C_{12}$-2,3,7,8-TCDD	100		25.0–150.0	25.0–150.0	90.0–111.2
$^{13}C_{12}$-2,3,7,8-TCDF	100		25.0–150.0	25.0–150.0	87.7–114.0
$^{13}C_{12}$-1,2,3,7,8-PeCDD	100		25.0–150.0	25.0–150.0	80.6–124.0
$^{13}C_{12}$-1,2,3,7,8-PeCDF	100		25.0–150.0	25.0–150.0	81.8–122.3
$^{13}C_{12}$-2,3,4,7,8-PeCDF	100		25.0–150.0	25.0–150.0	83.0–120.5
$^{13}C_{12}$-1,2,3,4,7,8-HxCDD	100		25.0–150.0	25.0–150.0	76.1–131.3
$^{13}C_{12}$-1,2,3,6,7,8-HxCDD	100		25.0–150.0	25.0–150.0	84.0–119.1
$^{13}C_{12}$-1,2,3,4,7,8-HxCDF	100		25.0–150.0	25.0–150.0	85.2–117.4
$^{13}C_{12}$-1,2,3,6,7,8-HxCDF	100		25.0–150.0	25.0–150.0	85.0–117.7
$^{13}C_{12}$-1,2,3,7,8,9-HxCDF	100		25.0–150.0	25.0–150.0	89.5–111.7
$^{13}C_{12}$-2,3,4,6,7,8-HxCDF	100		25.0–150.0	25.0–150.0	85.7–116.7
$^{13}C_{12}$-1,2,3,4,6,7,8-HpCDD	100		25.0–150.0	25.0–150.0	82.2–121.6
$^{13}C_{12}$-1,2,3,4,6,7,8-HpCDF	100		25.0–150.0	25.0–150.0	88.5–113.1
$^{13}C_{12}$-1,2,3,4,7,8,9-HpCDF	100		25.0–150.0	25.0–150.0	89.0–112.4
$^{13}C_{12}$-OCDD	200		50.0–300.0	50.0–300.0	164.2–243.6
$^{37}Cl_{12}$-2,3,7,8-TCDD	10		2.5–15.0	2.5–15.0	6.1–11.6

[1] All specifications are given as concentrations in the final extract or standard solution.
[2] s = standard deviation of the concentration; X = average concentration. Concentration Limits for labeled compounds in IPR and OPR aliquots are based on requirements for labeled compound recovery of 25–150% (sections 8.2.3. and 14.5.3).

TABLE 8.—SAMPLE PHASE AND QUANTITY EXTRACTED FOR VARIOUS MATRICES

Sample matrix [1]	Example	Percent solids	Phase	Quantity extracted
Single phase:				
Aqueous	Drinking water; Groundwater; Treated wastewater	<1	(2)	1000 mL
Solid	Dry soil; Compost; Ash	>20	Solid	10 g
Organic	Waste solvent; Waste oil; Organic polymer	<1	Organic	10 g
Multiphase:				
Liquid/Solid:				
Aqueous/solid	West soil; Untreated effluent; Digested municipal sludge; Fliter cake; Paper pulp; Tissue.	1–30	Solid	10 g
Organic/solid	Industrial sludge; Oily waste	1–100	Both	10 g
Liquid/Liquid:				
Aqueous/organic	In-process effluent; Untreated effluent; Drum waste	<1	Organic	10 g
Aqueous/organic/solid	Untreated effluent; Drum waste	>1	Organic and solid	10 g

[1] The exact matrix may be vague for some samples. In general, when the CDDs and CDFs are in contract with a multiphase system in which one of the phases is water, they will be preferentially dispersed in or adsorbed on the alternate phase, because of their low solubility in water.
[2] Aqueous samples are filtered after spiking with labeled analogs. The filtrate and the material trapped on the filter are extracted separately, and then the extracts are combined for cleanup and analysis.

* * * * *

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federal register

Thursday
February 7, 1991

Part IV

Department of Labor

Office of the Assistant Secretary for Veterans' Employment and Training

20 CFR Parts 626, 658, and Chapter IX
Veterans' Employment and Training Services; Proposed Rule

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

20 CFR Parts 626, 658 and Chapter IX

Veterans' Employment and Training Services

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

ACTION: Proposed Rule.

SUMMARY: The Department of Labor is proposing to consolidate in one Chapter the principal regulatory and other program guidelines that have been issued by the Office of the Assistant Secretary for Veterans' Employment and Training.

The regulations also substantially amend existing regulations and are intended to implement amendments to the Veterans' Employment and Training Statute at 38 U.S.C. chapters 41 and 42, as well as other statutory responsibilities of the Assistant Secretary which do not currently have regulatory guidelines. In addition, they clarify and stengthen the administration of ongoing legislative mandates regarding employment and training services provided to veterans.

DATES: Written comments must be received no later than April 8, 1991.

ADDRESSES: Comments should be addressed to Thomas E. Collins, Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; Attention: Mr. Hary P. Puente-Duany, Office of Veterans' Employment, Reemployment and Training.

FOR FURTHER INFORMATION CONTACT: Hary P. Puente-Duany at (202) 523–8611.

SUPPLEMENTARY INFORMATION: The Department of Labor is proposing to revise chapter IX of title 20, Code of Federal Regulations by removing parts 1001, 1005, and 1040 and proposing new parts 100–1090. The new parts reflect the proposed implementation of substantive changes in regulations necessitated by the passage of Public Law 100–323, Public Law 100–687, and Public Law 100–689 relating to the employment and training services provided to veterans.

The Veterans' Employment, Training and Counseling Amendments of 1988, Public Law 100–323, 102 Stat. 556, signed into law by the President on May 20, 1988 and the Veterans' Benefits and Program Improvement Act of 1988, Public Law 100–689, 102 Stat. 4161, signed into law by the President on November 18, 988, are the result of Congressional recognition that there have been significant changes in the Nation's economy and certain shifts in the composition and needs of the veterans' community.

Provisions are made based on legislative authority to assist service members who are within 180 days from their separation from military service in §§ 1000.101, 1010.111(i), 1020.100(d), 1020.101(c), 1030.101(a), 1030.110(g), 1030.116 (b) and (c) and 1040.120 the proposed rule. These provisions also apply to services to pilot sites authorized by Public Law 101–237. These provisions, originally set forth under the temporary authority provided in Public Law 101–237, are now consistent with permanent authority provided under Public Law 101–501.

The Provisions of Public Law 100–323 are complex and extensive and are listed here as evidence of their diversity:

a. Added definition of "local employment service office" (LESO).

b. Defined and expanded the authority and responsibilities of the Assistant Secretary for Veterans' Employment and Training (ASVET).

c. Established position of Regional Administrator for Veterans' Employment and Training (RAVET), effectively adding three more RAVETs to existing seven in Department of Labor regional offices.

d. Revised assignment criteria and duties for Directors and Assistant Directors for Veterans' Employment and Training (DVET/ADVET) to provide a waiver for required State residency and to provide functional supervision of the State employment system programs and staff.

e. Added requirements for monitoring by DVETs/ADVETs of implementation of veterans' preference laws and listing of job vacancies with the State employment service by Federal agencies, including subsequent monitoring of State agency priority referrals of veterans to those vacancies.

f. Expanded duties of Disabled Veterans' Outreach Program (DVOP) staff by adding case management and vocational guidance responsibilities.

g. Greatly expanded the legislative base for the Local Veterans' Employment Representative (LVER) position by establishing the formula by which funds will be allocated for support of 1,600 LVERs; the numerical formula for assigning LVERs to local employment service offices; the affirmative preference order for assigning or appointing Local Veterans' Employment Representatives (LVERs); a comprehensive list of duties; and requirements for the LVER to be administratively responsible to the local employment service office manager and to provide quarterly reports to the manager and the DVET. Also required is consultation with the DVET by the State administrative head of the employment service prior to assigning LVERs.

h. Established requirements for the process of developing and implementing performance standards for DVOP Specialists and LVER staff, including development of prototype standards by the ASVET for State use, and regular monitoring of DVOP/LVER performance under the standards by the DVETs and ADVETs with resulting recommendations and comments to be provided to the head of the State employment service.

i. Established a National Veterans' Employment and Training Institute primarily intended to train DVOP/LVER staff in carrying out their functions.

j. Amended the Veterans' Job Training Act (VJTA) including the requirements for case management by DVOP staff.

Section 402 of Public Law 100–689, 102 Stat. 4178, provides that the Assistant Secretary for Veterans' Employment and Training will coordinate the activities of the Department of Labor to assist unemployed veterans in securing employment and training services, particularly dislocated workers who can be provided assistance under Title III of the Job Training Partnership Act (JTPA). In addition, through a Memorandum of Understanding with the Department of Veterans' Affairs (VA), a comprehensive effort is made to coordinate a wide range of services and assistance in order to provide the full range of opportunities to veterans for integrated employment and training services.

These proposed regulations incorporate the changes mandated by Public Law 100–323 which require the attention of the ASVET in the operation of the public employment service as it relates to the services provided to veterans and other eligible persons for which the ASVET has statutory responsibility. The regulations also provide for changes to the method of administration of grants to the States for the DVOP/LVER and JTPA IV(C) Programs, the creation and administration of performance standards for DVOP/LVER staff in the State employment service; and the determination of compliance of the State employment services with the applicable legislation, regulations, Veterans' Program Letters and directives administered by the ASVET pertaining to provision of labor exchange services to veterans.

Executive Order 12291

The proposed regulations are not classified as a major rule under Executive Order 12291 on Federal regulations because they are not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or, (3) significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required. In addition, these regulations do not affect any trade-sensitive activity because they do not apply in any way to governments, industries, or firms engaged in international trade.

Regulatory Flexibility Act

The Department believes that these regulations will not have significant economic impact upon a substantial number of small entities within the meaning of section 3(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1165, 5 U.S.C. 601 *et seq.* The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. The proposed rules primarily implement amendments to 38 U.S.C. chapter 41 and largely concern changes at the national and State levels in the administration of ongoing veterans' employment and training programs with no significant economic impact expected with respect to small entities. Accordingly, no regulatory impact analysis is required. See 5 U.S.C. 605(b).

Paperwork Reduction Act

This proposal contains information collection requirements in § 1030.125(b)(3). These paperwork requirements have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980. Comments on the proposed paperwork provisions should be sent directly to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for OASVET (See address at the end of this discussion). The respondents should be representatives of State Employment Security Agencies (SESAs) or their employees. The burden hour estimate includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. In each instance, the resultant information collection would be used by VETS to comply with legislative requirements, assess compliance with services to veterans, and monitoring priority services to veterans.

Section 1030.125(b)(3) requires SESAs to furnish VETS a copy of the quarterly report prepared by Local Veterans' Employment Representatives (LVER) pursuant to 38 U.S.C. 2004(c) noting compliance with Veterans' Standards of Performance and indicating the quality and quantity of services provided to veterans by Local Employment Service Offices and other service delivery points. VETS estimates that 6,400 reports will be prepared in an average time of forty-five minutes. The resulting estimated total burden is 4,800 hours.

Existing requirements provide for the LVER to compile data on Veterans' Standards of Performance pertinent to services to veterans and review of local office records to ascertain the quantity and quality of services provided to veterans. This proposal does not change existing requirements. Records are already maintained that provide the source information for the narrative report and therefore, no burden hours are assigned for collection of the basic data.

Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, to: Hary Puente-Duany, Director, Office of Veterans' Employment, Reemployment and Training, OASVET, room S–1316, 200 Constitution Avenue, NW., Washington, DC 20210; and to the Office of Information and Regulatory Affairs of OMB, Attention: Steve Semenuk, room 3001, New Executive Office Building, Washington, DC 20503.

List of Subjects

20 CFR Part 626

Employment, Manpower training.

20 CFR Part 658

Administrative practice and procedure, Employment

20 CFR Part 1000

Administrative practice and procedure, Employment, Manpower training programs, Veterans.

20 CFR Part 1010

Employment, Manpower training programs, Veterans.

20 CFR Part 1020

Manpower training programs.

20 CFR Part 1030

Grant programs-Labor.

20 CFR Part 1040

Employment.

Proposed Rule

For the reasons set forth in the preamble, it is proposed that title 20 Code of Federal Regulations be amended as follows:

1. Chapter IX is revised to read as follows:

CHAPTER IX—OFFICE OF THE ASSISTANT SECRETARY FOR VETERANS' EMPLOYMENT AND TRAINING, DEPARTMENT OF LABOR

Part 1000—Purpose and Scope of Chapter IX: Definitions
Part 1010—OASVET Authority and Responsibility
Part 1020—State Agency Services to Veterans
Part 1030—Disabled Veterans' Outreach Program and Local Veterans' Employment Representative Program
Part 1040—Job Training Partnership Act (JTPA), Title IV, Part C—Veterans' Employment Programs
Part 1045—Transition Assistance Programs (Reserved)
Part 1050—Programs for Homeless Veterans (Reserved)
Part 1060—National Veterans' Training Institute (Reserved)
Part 1070—Secretary's Committee on Veterans' Employment (Reserved)
Part 1080—Federal Contractor Reporting Program (Reserved)
Part 1090—Veterans' Reemployment Rights Program (Reserved)

PART 1000—PURPOSE AND SCOPE OF CHAPTER IX; DEFINITIONS

Sec.
1000.100 Purpose and scope of chapter IX.
1001.101 Definitions of terms used in chapter IX.

Authority: 29 U.S.C. 49k; 38 U.S.C. chapters 41–43; 29 U.S.C. 1579(a)

§ 1000.100 Purpose and scope of chapter IX.

This chapter contains the Department of Labor's regulations for implementing 38 U.S.C. chapters 41, 42 and 43, and the provisions of The Job Training Partnership Act, title IV, part C (29 U.S.C. 1721 *et seq.*) which require the Secretary of Labor to provide eligible veterans and eligible persons the maximum of employment and training opportunities, with priority given to the needs of disabled veterans and veterans of the Vietnam era, through the public employment service system established pursuant to the Wagner-Peyser Act, as amended, and entities receiving funds through grants or contracts with the Department of Labor, including the Job Training Partnership Act.

§1000.101 Definitions of terms used in chapter IX.

Except as otherwise provided, the following definitions apply to 20 CFR chapter IX.

Administrative entity means the entity designated to administer a job training plan under section 103(b)(1)(B) of the Job Training Partnership Act.

Agency limitations means the amount of funds that are appropriated or allocated for use in program activities during a fiscal or program year and which cannot be exceeded by the agency or a grantee.

Appointment means the process of selection and eventual appointment of an individual in a job based on the principles and practices of the appropriate State Civil Service/Merit System and this chapter.

Assignment means the assigning of an individual to a position, or assigning duties to an individual based on the principles and practices of the appropriate State Civil Service/Merit System and this chapter.

Assistant Director for Veterans' Employment and Training (ADVET) means a Federal employee who is designated as an assistant to a Director for Veterans' Employment and Training (DVET) pursuant to 38 U.S.C. 2003.

Assistant Secretary for Veterans' Employment and Training (ASVET) means the chief official of the Department of Labor administering Veterans' Employment and Training programs as established pursuant to 38 U.S.C. 2002A.

Case management means activities performed by a member of LESO or SDP staff such as a Disabled Veterans' Outreach Program (DVOP) specialist or a Local Veterans' Employment Representative (LVER) who has been assigned veteran's case manager responsibilities. Such activities include, but are not limited to, tracking a veteran applicant's progress towards employability and providing the veteran with necessary advice, counsel, and support such as periodic contact, arranging for appropriate counseling, and following up with the veteran to help ensure successful completion of training or attainment of suitable employment.

Corrective action means an action taken either by the Department or a contractor/grantee to bring into compliance any program or activity operated under this Chapter (Chapter IX) with the legislative, regulatory, Veterans' Program Letters, or grant assurance requirements.

Date of completion means the date when all work under a grant is completed or the date in the grant award document, or any supplement or modification thereto, on which Federal assistance ends.

Department or *DOL* means the Department of Labor.

Director for Veterans' Employment and Training (DVET) means the representative of the ASVET on the staff of the Veterans' Employment and Training Service (VETS) at the State level.

Disabled veteran means a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs and who is not classified as a Special Disabled Veteran.

Disallowed costs means those charges to a grant which the grant officer determines to be impermissible in accordance with the applicable Federal Cost Principles or other conditions contained in the grant.

DOD means the Department of Defense.

Eligible person means:

(1) The spouse of any person killed in action or who died on active duty of a service-connected disability; or

(2) The spouse of any member of the Armed Forces serving on active duty who at the time of application for assistance under this part, is listed, pursuant to 37 U.S.C. 556 and the regulations issued thereunder, by the Secretary concerned, in one or more of the following categories and has been so listed for a total of more than 90 days:

(i) Missing in action,

(ii) Captured in line of duty by a hostile force, or

(iii) Forcibly detained or interned in line of duty by a foreign government or power; or

(3) The spouse of any person who has a total disability permanent in nature resulting from a service-connected disability or the spouse of a veteran who died while a disability so evaluated was in existence.

Federal Contractor Program (FCP) means the program by which certain recipients of federal contracts in excess of $10,000 are required to report to the Secretary annually on the numbers of Vietnam-era and special disabled veterans hired under an affirmative action program which also requires that all job openings which occur on and after the initiation of the contract be listed with local employment service offices.

Functional supervision means the provision of technical assistance, including suggestions for improvement of services, helping to plan programs and projects, coordinating services, and checking for compliance with Department of Labor regulations affecting veterans, helping to correct errors by working with local and State staffs, analyzing work as it affects veterans and eligible persons, training new State agency personnel, and bringing matters which require corrective action to the attention of those State agency personnel who have authority over policy, procedures and staff. Functional supervision is distinct from line supervision by LESO managers and does *not* authorize hiring, firing, disciplining, or issuing directives to State agency employees, nor does it authorize making regulations, changing procedures, or establishing internal policies for the State agency.

Intrinsic management structure means an office setting where a first line supervisor manages the day-to-day operations of employees who are physically located in the same locale (same office space or within the same structure) and provide the full range of services to the clientele from that locale.

Governor means the chief executive officer of a State.

JTPA means the Job Training Partnership Act (29 U.S.C. 1501.)

Labor exchange services means those activities or efforts which are directed to help applicants find jobs, training or supportive services including, but not limited to, registration, counseling, case management, referral to supportive services, job development, referrals to and placement in jobs and training opportunities, the provision of public information and application forms regarding other federal or federally funded programs such as, but not limited to, programs for dislocated workers, veterans' benefits available from the Department of Veterans' Affairs (VA), training programs offered through the Job Training Partnership Act (JTPA), and the Bureau of Apprenticeship and Training; and provision of information regarding how to file complaints relative to applicant's efforts to find jobs, training or supportive services.

Local Employment Service Office (LESO) means an employment service location which has an intrinsic management structure and at which employment services are offered in accordance with the Wagner-Peyser Act, and which may include multiple service delivery points.

Local Veterans' Employment Representative (LVER) means a member of the State agency staff designated and assigned by the State agency administrator to serve veterans and eligible persons pursuant to this

part and in accordance with 38 U.S.C. 2004.

Notification of Obligational Authority (NOA) means a notice to a State agency of the availability of funding amounts or adjustments made to previously announced amounts.

OFCCP means the Office of Federal Contract Compliance Programs in the Employment and Standards Administration of the Department of Labor.

OPM means the Office of Personnel Management.

Public employment service means the State Agency designated by the Department of Labor to carry out the provision of services under the Wagner-Peyser Act.

Qualified means an individual who has been determined by a State civil service/merit system to possess the requisite knowledge, skills, and abilities to perform the duties of a particular job-occupation.

Recently separated veteran means a veteran separated from active military service within the last forty-eight months prior to application or registration for benefits or assistance.

Region means the Department of Labor region where the Department of Labor operates a regional office.

Regional Administrator for Veterans' Employment and Training (RAVET) means the representative of the ASVET on the staff of the Veterans' Employment and Training Service at the Department of Labor regional level who supervises all other VETS staff within the region to which assigned; and is responsible to, and is under the administrative direction of the ASVET.

Registration for assistance with a local employment service office means the process which is considered to be in effect for a program year for an individual, if that individual:

(1) Registered, or renewed the individual's registration, for assistance with that office during the program year, or

(2) So registered or renewed such individual's registration during a previous program year, and, in accordance with appropriate regulations is counted as still being registered for administrative purposes.

Remedial action means those actions taken either by the Department or a contractor/grantee to correct a disallowable action; expenditure; and/or program activity that does not meet the requirements of the grant or contract.

Request for Proposal (RFP) means a request by the Department to the public for proposals on the provision of services for the employment and training of veterans.

Secretary means the Secretary of Labor.

Separating military personnel means those members of the Armed Forces of the United States, officer or enlisted, who are within 180 days of separation from the service and who have communicated an initial determination that they desire to separate from active military service upon expiration of the current term of service or have been notified in impending release from service.

Service-connected disabled veteran means a person who has been rated by the Department of Veterans Affairs as having received a disabling injury or disease as a direct result of military service.

Service Delivery Point (SDP) means any location from which services are rendered.

Solicitation for Grant Application (SGA) means a notice by the Department of the availability of grant funds which may be awarded based upon the submission of an application.

Special disabled veteran means:

(1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability related at 30 percent or more, or rated at 10 or 20 percent in the case of a veteran who has been determined under section 1506 of title 38, U.S.C., to have a serious employment handicap; or

(2) A person who was discharged or released from active duty because of service-connected disability.

State means one of the fifty States, the District of Columbia, Puerto Rico, and the United States Virgin Islands.

State Agency or *State Employment Security Agency (SESA)* means the State governmental unit designated pursuant to section 4 of the Wagner-Peyser Act to cooperate with the United States Employment Service in the operation of the public employment service system.

Suspension means an action by the Grant Officer which temporarily suspends Federal assistance under the grant pending corrective action by the grantee or pending a decision to terminate the grant by the Grant Officer.

Termination means the cancellation of Federal assistance, in whole or in part, under a grant at any time prior to the date of completion.

Unemployed individual means an individual who is without a job and who is available for, and seeking work (using criteria used by the Bureau of Labor Statistics of the Department of Labor).

United States Employment Service (USES) means the component of the Employment and Training Administration of the Department of Labor, established under the Wagner-Peyser Act to maintain and coordinate a national system of public employment service agencies.

VA means the Department of Veterans Affairs.

Veteran means a person who:

(1) Served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge, or

(2) Was discharged or released from active duty because of a service-connected disability.

Veteran of the Vietnam era means an eligible veteran who:

(1) Served on active duty for a period of more than 180 days, any part of which occurred during the Vietnam era (August 5, 1964, through May 7, 1975) and was discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed during the Vietnam era.

Veterans' Employment and Training Service (VETS) means the organizational component of the Department of Labor administered by the Assistant Secretary of Labor for Veterans' Employment and Training established to promulgate and administer policies and regulations to carry out the purposes of chapters 41, 42, and 43 of title 38 United States Code, and to provide eligible veterans and eligible persons the maximum of employment and training opportunities, and reemployment rights pursuant to 38 U.S.C. 2002A.

VJTA means the Veterans' Job Training Act.

VPL means a Veterans' Program Letter which is a directive issued by the ASVET providing clarification, guidance, direction or emphasis to programs functioning under this part.

PART 1010-OASVET AUTHORITY AND RESPONSIBILITY

Sec.

1010.100 Purpose and scope.
1010.110 Roles of the Assistant Secretary for Veterans' Employment and Training (ASVET).
1010.111 Authority and responsibilities of the ASVET.
1010.112 Authority and responsibilities of Regional Administrators for Veterans' Employment and Training (RAVET).

Sec.
1010.113 Assignment of Directors and Assistant Directors for Veterans' Employment and Training and assignment of Federal clerical support.
1010.114 Responsibilities and duties of DVETs and ADVETs.

Authority: 29 U.S.C. 49k; U.S.C. Chapters 41–43; 29 U.S.C. 1579(a).

§ 1010.100 Purpose and scope.

This part describes the authority and responsibilities of the Assistant Secretary for Veterans' Employment and Training (ASVET) and the staff of the Veterans' Employment and Training Service (VETS).

§ 1010.110 Role of the Assistant Secretary for Veterans' Employment and Training (ASVET).

The ASVET shall be the principal advisor to the Secretary with respect to the formulation and implementation of all departmental policies and procedures to carry out the purposes of chapters 41, 42, and 43 of 38 United States Code and all other Department of Labor employment, unemployment, and training programs to the extent they affect veterans. The ASVET will coordinate, formulate, promulgate, and administer policies, regulations, grant procedures, grant agreements and administrative guidelines through the Veterans' Employment and Training Service (VETS) so as to provide eligible veterans and eligible persons the maximum of employment and training opportunities, with priority given to the needs of disabled veterans and veterans of the Vietnam era, and reemployment rights of veterans, National Guard and Reserve members.

§ 1010.111 Authority and responsibilities of the ASVET.

(a) The ASVET, except as expressly provided otherwise, is delegated the responsibility and authority by the Secretary to carry out all provisions of chapters 41, 42, and 43 of title 38, U.S.C.; 29 U.S.C. 1721; and 42 U.S.C. 11448; and coordinate all programs under the jurisdiction of the Secretary for the provision of employment and training services designed to meet the needs of disabled veterans, veterans of the Vietnam era, and all other eligible veterans and eligible persons.

(b) The ASVET will authorize and monitor certifications of unavailability of disabled veterans of the Vietnam era and disabled veterans for DVOP appointment pursuant to 38 U.S.C. 2003A(a)(1), and waivers for assignment for LVER pursuant to 38 U.S.C. 2004 (a)(4).

(c) The ASVET shall promote and monitor participation of qualified veterans and eligible persons in employment and training opportunities under the Job Training Partnership Act and other federally funded employment and training programs.

(d) The ASVET shall ensure that veterans who are dislocated workers eligible for assistance under the provisions of the Job Training Partnership Act, title III, or who are otherwise unemployed, receive, to the maximum extent feasible, assistance (vocational guidance services or vocational counseling, or both), including any information needed by veterans to apply for benefits and services to which they are eligible; to obtain resolution of questions or problems relative to those benefits or services, and; to initiate any appeals of denial of such benefits or services.

(e) The ASVET, in consultation with the Assistant Secretary for ETA, as the Secretary deems necessary, will coordinate programs of the Department which identify or target unemployed and/or dislocated worker veterans or other veterans eligible for participation under the Job Training Partnership Act or other laws administered by the Department for employment and training services for veterans.

(f) The ASVET shall, in coordination with the Department of Veterans Affairs, conduct a periodic evaluation of the implementation of respective responsibilities under the Departments' Memorandum of Understanding pursuant to section 402(b) of Public Law 100–689 (102 Stat. 4161).

(g) The ASVET shall, through the VETS staff, administer the Veterans' Reemployment Rights (VRR) program provided for in 38 U.S.C. 2021–2022, and 2024 *et seq.*

(h) The ASVET shall establish an annual priority for services to veterans, establish targets, establish pilot programs to meet annual emphasis decisions, and create or continue other special programs designed to meet the employment and training needs of veterans.

(i) The ASVET will provide employment and training services, including vocational guidance assistance to separating military personnel, coordinating such services with the VA, DOD, State agencies and other DOL programs.

(j) The ASVET will encourage and support all activities, services and programs which provide or advance employment and training opportunities for veterans through Memorandum of Understanding or Agreement with other Federal Departments or agencies (e.g. VA, OPM) or with other agencies within the Department.

(k) The ASVET may issue Veterans' Program Letters (VPLs) to supplement and further clarify these regulations and provide program guidance and direction to State agencies and VETS staff.

§ 1010.112 Authority and responsibilities of Regional Administrators for Veterans' Employment and Training (RAVET).

(a) The ASVET shall assign to each region for which the Secretary operates a regional office a representative of VETS to serve as RAVET for such region in accordance with 38 U.S.C. 2002A.

(b) Each RAVET is delegated the authority to serve as the ASVET's representative and carry out the functions listed in § 1010.111 of this part in the region of assignment in accordance with agency policies and procedural directives from the ASVET or a designated representative.

§ 1010.113 Assignment of Directors and Assistant Directors for Veterans' Employment and Training and assignment of Federal clerical support.

The ASVET shall assign to each State a representative of VETS to serve as Director for Veterans' Employment and Training (DVET) for that State and such other staff as provided in 38 U.S.C. 2003. Appointments of DVETs, Assistant Directors for Veterans' Employment and Training (ADVETs), and full-time clerical support shall also be in accordance with provisions of title 5, U.S.C., governing appointments in the Federal competitive service.

§ 1010.114 Responsibilities and duties of DVETs and ADVETs.

The DVET shall be responsible for assuring the execution of the veterans' employment, reemployment and training policies and programs of the ASVET in the State to which assigned in accordance with 38 U.S.C. 2003. ADVETs are delegated responsibility and authority by the DVET relative to their day to day functions and monitoring the policies and programs of the ASVET in the State to which they are assigned.

PART 1020—STATE AGENCY SERVICES TO VETERANS

Sec.
1020.100 Purpose and scope.
1020.101 Requirements for State Agency provision of services.
1020.102 Requirements for State Agency provision of facilities and support for Veterans' Employment and Training Service (VETS) staff.
1020.103 Requirements for State Agency reporting.
1020.104 State Agency planning.

Sec.

1020.105 Requirements for State Agency cooperation and coordination with other agencies and organizations.
1020.106 Nondiscrimination requirements and complaint procedures.
1020.107 Determination of State Agency compliance.

Authority: 29 U.S.C. 49k; 38 U.S.C. chapters 41–43.

§ 1020.100 Purpose and scope.

This part describes the requirements for determining compliance of State Agencies in carrying out the provisions of 38 U.S.C. chapters 41 and 42 with respect to:

(a) Providing services to eligible veterans and eligible persons to enhance their employment prospects;

(b) Priority referral or special disabled veterans and veterans of the Vietnam-era to job openings listed by Federal contractors pursuant to 38 U.S.C. 2012(a);

(c) Reporting of services provided to eligible veterans and eligible persons pursuant to 38 U.S.C. 2007(c) and 2012(c); and

(d) Providing employment and training outreach assistance to those military personnel separating from active duty.

§ 1020.101 Requirements for State Agency provision of services.

(a) Each State Agency will assure that all of its LESOs and SDPs provide effective labor exchange services to eligible veterans and eligible persons with priority given to disabled veterans and veterans of the Vietnam-era in accordance with 38 U.S.C. 2002. Each shall observe the following priority order of referral for the provision of services:

(1) Special disabled veterans,

(2) Veterans of the Vietnam era,

(3) Disabled veterans other than special disabled veterans,

(4) All other veterans and eligible persons, and

(5) Nonveterans.

(b) The State Agency is responsible for providing priority labor exchange services to veterans, in the order of priority cited above, irrespective of DOL funding source, and will assure that all LESO and SDP staff provide priority services to veterans.

(c) Each State Agency shall ensure that the necessary administrative controls are in effect to ensure that veterans and other eligible persons and separating military personnel who request assistance under this chapter are promptly served.

(d) Each State Agency will ensure that the head of each LESO/SDP is responsible for ensuring compliance with the provisions of this chapter (chapter IX) regarding priority referral of veterans to Federal contractors at no cost to the DVOP/LVER grant, and is responsible for maintaining and having available for review a quarterly report regarding the character of services provided in that LESO/SDP.

§ 1020.102 Requirements for State Agency provision of facilities and support for Veterans' Employment and Training Service (VETS) staff

(a) Each SESA will provide adequate and appropriate facilities and administrative support such as office space, furniture, telephone, equipment, and office supplies to DVETs, ADVETs, and clerical staff located in the state. Such facilities and support will be commensurate with those provided to their State Agency counterparts, but not less than the Federal requirements prescribed by the General Services Administration.

(b) Space provided to the VETS staff must be accessible to disabled or handicapped veterans, particularly by wheelchair, and be in an area with access to the general public.

(c) Administrative costs associated with the DVET and VETS staff must be distributed in the same manner as with all other central office staff, in accordance with the applicable Federal cost principles as defined by the Office of Management and Budget (OMB Circular A–87) and regulations (29 CFR part 97). (Copies of OMB Circular A–87 and its revisions, published at 46 FR 9551 (January 28, 1981), and 53 FR 40353 (October 14, 1988), can be obtained by calling the Office of Management and Budget at (202) 395–7332.)

(d) VETS's staff will be provided necessary equipment, including but not limited to: File cabinets with locks necessary to maintain records covered by the Privacy Act (5 U.S.C. 552a) (See 29 CFR part 70a); desks, chairs, tables, lamps and other furnishings necessary for the maintenance of an office setting; and access to computerized equipment with appropriate links to the State Agency's Reporting System, computerized job matching systems and other systems needed for evaluating and monitoring of State agency activities on the same basis as that provided to SESA management staff.

§ 1020.103 Requirements for State Agency reporting.

(a) Each State agency will provide authorized VETS staff with access to all State Agency administrative, budgetary and programmatic records, and copies of any reports related in whole or in part to services to veterans and/or eligible persons.

(b) Each State Agency will collect such information, prepare such reports, and provide such information in such format and at such times as the ASVET prescribes.

(c) Each State Agency will establish an appropriate reporting system and/or mechanism in each LESO to measure the performance of LVER staff and DVOP specialists against performance standards as required in § 1030.130 of this chapter.

(d) The State Agency will establish appropriate program management, measurement and appraisal systems, and/or mechanisms to collect data pertinent to the State agency performance standards established by the ASVET pursuant to 38 U.S.C. 2007(b).

§ 1020.104 State Agency Planning.

(a) *General.* The ASVET will issue instructions through VPLs on the creation of the Veterans' Services portion of the Annual Plan required by section 8 of the Wagner-Peyser Act. In developing the Annual Plan, the State Agency will be required to describe the methods it will employ to ensure priority services to veterans and other eligible persons.

(b) *Specific Requirements.* The plan to be developed must include, at minimum the following:

(1) A description of how the State Agency and all its staff elements with access to employer job orders will provide priority services to veterans and other eligible persons;

(2) The method by which any existing or anticipated compliance problems, including problems with State agency performance standards pursuant to 38 U.S.C. 2004A, will be resolved;

(3) The method by which the State Agency will measure DVOP specialists and LVER staff, performance;

(4) A procedure to ensure that appropriate training is provided to DVOP specialists and LVER staff, management, and other State Agency staff through State Agency resources and the National Veterans' Training Institute;

(5) State Agency plans for implementing the coordination required by the Dislocated Worker provisions of title III of JTPA;

(6) Plans for development of special projects for special emphasis pursuant to VPLS issued by the ASVET.

§ 1020.105 Requirements for State Agency cooperation and coordination with other agencies and organizations.

(a) Each State Agency shall establish written agreements with the Department

of Veterans Affairs (VA) offices serving the State to maximize the use of VA employment and training programs for veterans and eligible persons.

(b) All programs and activities governed by this part will be coordinated to the maximum extent feasible with other programs and activities under title 38 U.S.C., the Wagner-Peyser Act, the Job Training Partnership Act, other federal or federally funded programs, veterans' service organizations, private agencies which have active veterans' employment and training or vocational rehabilitation programs, or other employment and training programs at the State and local level.

§ 1020.106 Nondiscrimination requirements and complaint procedures.

(a) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing, will be governed by the provisions of 29 CFR parts 31 and 32.

(b) Each SDP shall prominently display information on the various complaint systems to advise veterans and eligible persons about procedures for filing complaints regarding employment service, Federal contractor, equal opportunity, failure by employers to list jobs or provide reemployment rights, and other complaints.

(c) In the event that a veteran, reservist or member of the National Guard presents a reemployment rights complaint to a DVOP, LVER or other staff member of the State Agency, the information provided by the complainant, to include the name, address and phone number, employer and any other information provided, will be transmitted expeditiously to the DVET for investigation under the provisions of 38 U.S.C. chapter 43. The DVOP, LVER or other State Agency staff member should not get involved in any compliance activities, nor should the complaint be unnessarily delayed by administrative requirements.

§ 1020.107 Determination of State Agency compliance.

(a) The ASVET will ensure that State Agencies subject to the provisions of 38 U.S.C. chapters 41 and 42 and other recipients of funds under this chapter (chapter IX) comply with the appropriate statutory provisions and objectives; these regulations; their grant or contractual provisions or assurances, certifications and plans provided as conditions to receiving funding; and Veterans' Program Letters interpreting regulations and establishing program requirements. Upon a finding of non-compliance and inability to obtain corrective or remedial action from the State agency or recipient of funds under this chapter, the ASVET will make a final determination of non-compliance and forward it to the Secretary for action. The ASVET will apply the requirements and procedures as outlined in 20 CFR part 658, subpart H to programs under this part (see 20 CFR 658.700).

(b) The DVET will record any deficiences or problems encountered during LESO evaluations or reviews; or in the discharge of the DVET's functional supervision; or failure to meet veterans' performance standards; or any matter that is brought to the DVET's attention in the form of a complaint. DVETs will initiate corrective action through notice to the SESA which identifies any problem, action or lack of action which result in less than adequate compliance with statutory provisions, these regulations, grant provisions or assurances, or Veterans' Program Letters. The DVET's notice will request informal negotiations within 10 working days of receipt of the notice, or a corrective or remedial plan to be submitted within 20 working days from receipt by the SESA of the notice. In the event the corrective action plan or informal negotiations do not resolve the non-compliance issues within 30 working days from the notice, the DVET will document the efforts to resolve and provide such documentation, including the original notice and SESA response, if any, to the RAVET.

(c) The RAVET may initiate compliance enforcement action pursuant to 20 CFR 658.702 (a), (b), (d) or (h); and 20 CFR 703 based on any identification of problems, action or lack of action that places a SESA out of compliance with appropriate statutory provisions, these regulations, grant provisions or assurances, veterans' performance standards or Veterans' Program Letters. Compliance action will be initiated upon receipt from a DVET of documentation that informal efforts to seek a corrective or remedial action plan have failed. If corrective action cannot be achieved within procedural timeframes as noted in 20 CFR part 658, subpart H and these regulations and/or the interpreting VPL, the matter will be referred to the ASVET for final action. A copy of the referral and its documentation will be provided to the State Agency.

(d) If it is determined by the ASVET that certain State Agencies are not complying with applicable statutory mandates, these regulations, grant provisions or assurances, Veterans' Program Letters or veterans' performance standards, the ASVET will require State Agencies to provide documentary evidence to the ASVET that their failure is based on good cause pursuant to 20 CFR part 705. If good cause is not shown, the ASVET shall apply the requirements and procedures of 20 CFR 658.706 and paragraph (a) of this section.

(e) Every effort should be made by the DVET to resolve all noncompliance issues with the State Agency before remedial actions are required.

(f) A report of those State Agencies in noncompliance with the standards of performance and their corrective action plans shall be incorporated into the Secretary's Annual Report to the Congress.

PART 1030—DISABLED VETERANS' OUTREACH PROGRAM AND LOCAL VETERANS' EMPLOYMENT REPRESENTATIVE PROGRAM

Sec.

1030.100 Purpose of scope.
1030.101 Common considerations.
1030.110 Appointment and role of DVOP staff.
1030.111 Duties of DVOP specialists.
1030.115 Requirements for the assignment and role of LVER staff.
1030.116 Duties of LVER staff.
1030.120 Funding for the DVOP/LVER Program.
1030.122 Grants administration.
1030.125 Reporting requirements.
1030.130 Performance standards for DVOP/LVER staff.

Authority: 29 U.S.C. 49k; 38 U.S.C. chapters 41–43.

§ 1030.100 Purpose and scope.

Requirements are contained in this part on the administration and oversight of the Disabled Veterans' Outreach Program (DVOP) authorized by 38 U.S.C. 2003A and the Local Veterans' Employment Representative (LVER) program authorized by 38 U.S.C. 2004.

§ 1030.101 Common considerations.

(a) Persons assigned full-time to LVER duties and DVOP Specialists shall be utilized exclusively for employment and training services to veterans and separating military personnel.

(b) State Agencies may not charge against the DVOP/LVER grant any funds expended on services to non-verterans.

(c) State Agencies shall consult with the DVET when:

(1) Determining the distribution of LVERs;

(2) Making the appointment or assignment of qualified individuals to DVOP/LVER positions; and

(3) Determining the stationing of DVOP specialists.

(d) Determination of which applicants for DVOP and LVER positions are "qualified" rests with each State's civil service merit system.

(e) In identifying/ranking applicants and in appointing/assigning individuals for DVOP/LVER positions from the list of "qualified" candidates, each State civil service/merit system shall provide a systematic method providing preference, in the order specified in 38 U.S.C. 2003A and 2004 and as reflectd in §§ 1030.110 and 1030.115 of this part.

(f) Each State Agency will maintain records to fully document DVOP and LVER appointment/assignments to include a record of how the system or preference in paragraph (e) of this section was applied to each qualified veteran applicant.

(g) The formulas established for the assignment of DVOP/LVER staff shall be adhered to, unless a waiver is granted by the RAVET, or unless approved appropriations preclude the full application of the criteria as noted in writing by the grant officer upon grant award or modification.

§ 1030.110 Appointment and role of DVOP staff.

(a) Appointment and funding of DVOP Specialists shall be in accordance with 38 U.S.C. 2003A. If no qualified disabled veterans of the Vietnam era are found to fill a DVOP position pursuant to 38 U.S.C. 2003A(a)(1), the State Agency shall submit sufficient evidence of the attempts to locate a qualified disabled veteran of the Vietnam era; and of subsequent efforts to locate a qualified disabled veteran to permit the RAVET to certify that no qualified disabled veterans were available before granting a waiver to enable appointment of a qualified non-disabled veteran. The waiver request will describe, in writing, the recruitment efforts made and provide reasons for considering such waiver. The request must include the documentation required at section 1030.101(f) of this part. The waiver request will be forwarded to the DVET for review and recommendation who will forward it to the RAVET for final written certification of the unavailability of disabled veterans of the Vietnam era or disabled veterans and action on the appointment waiver. Written approval from the RAVET of the waiver request is required before filling a DVOP position with a non-disabled veteran.

(b) Under no circumstances may DVOP positions be filled by nonveterans or duties assigned to someone other than State employees. Where the State agency has displaced DVOP specialists with lesser preference veterans or nonveterans, the Department shall require remedial personnel actions to restore the proper higher preference individual to the position consistent with the intent of Congress.

(c) Compensation for DVOP Specialists should be commensurate with the duties of their position. In no instance will a DVOP specialist be compensated at a rate less than the rate prescribed for an entry level professional in that State government agency of the State concerned. State agencies should develop a career progression for DVOP, commensurate with other professional positions within that State Agency.

(d) DVOP specialists shall be assigned only those duties directly related to meeting the employment and training needs of eligible veterans, as defined by the ASVET in the grant provisions or assurances, with priority for the provision of services in the order prescribed by 38 U.S.C. 2003A(b)(1).

(e) *Retention and Recall.* The statutory appointment preferences for DVOP specialists impact on the retention and recall rights of indiviudal DVOP employees under the State merit systems. Since Congress intended that the required DVOP positions be filled by the highest preference category available, a duly appointed DVOP specialist shall be retained and/or recalled in the event of a reduction in force or other personnel action affecting employees of the State agency unless displaced by:

(1) A veteran of higher statutory preference status; or

(2) A veteran of equal statutory preference status with greater State Civil Service/Merit system rights, e.g., seniority.

(f) *Location of DVOP Specialists:* (1) Not more than three-fourths of the DVOP specialists shall be stationed at local employment service offices (LESO) in each State, unless a written waiver is granted by the RAVET. Waiver requests must contain assurances that no less than one-fifth of the DVOP specialists in the State will be assigned to effective and productive stationed responsibilities.

(2) DVOP Specialists not stationed in LESOs shall be stationed as established by agreement with the Department of Veterans' Affairs to include centers which provide readjustment counseling, veterans' assistance offices, VA Vet Centers, non-profits operating JTPA IV(C) training programs and other sites as may be determined to be appropriate, based on demonstrated need, following consultation with the DVET and appropriate representatives from the VA.

(3) The amount of DVOP specialist time spent stationed at other than offices of SESA shall be calculated either by the number of hours per week each individual DVOP specialist is so stationed compared to the number of regular work week hours; or, the statewide total number of weekly hours DVOP specialists devote to working from a stationed site compared to the total number of hours all DVOP specialists work for the SESA.

(g) DVOP specialists may be located at military installations or hospitals as determined appropriate for the purpose of assisting separating military personnel if the number of separating military personnel warrant that action, and such an outstationed assignment receives the prior approval of the DVET, the State Agency, and the military installation. Priority will be given to serving those service members receiving disability separations.

§ 1030.111 Duties of DVOP specialists.

(a) Each DVOP specialist shall perform the duties prescribed in 38 U.S.C. 2003A(c) for the purpose of providing services to eligible veterans in accordance with the priorities set forth in 38 U.S.C. 2003A(b)(1).

(b) The SESA shall develop and apply performance standards for each DVOP, consistent with the duties and responsibilities described for the DVOP and the requirements of § 1030.130 of this part.

§ 1030.115 Requirements for the assignment and role of LVER staff.

(a) Appointment and funding of LVER staff shall be in accordance with 38 U.S.C. 2004. If no qualified service-connected disabled veterans are found to fill a LVER position pursuant to 38 U.S.C. 2004(a)(4), the State Agency shall submit sufficient evidence of the attempts to locate such a qualified service-connected disabled veteran to permit the RAVET to certify that no qualified service-connected disabled veterans were available before granting a waiver to enable appointment of a qualified non-disabled veteran. The same process shall be followed in the event no veterans are found available to enable appointment of an eligible person. The waiver request will describe, in writing, the recruitment efforts made and provide reasons for considering such waiver. The request must include the documentation required at § 1030.101(f) of this part. The waiver request will be forwarded to the DVET for review and recommendation who will forward it to the RAVET for final written certification of the

unavailability of service-connected disabled veterans first, then of veterans, and action on the appointment waiver. Written approval from the RAVET of the waiver request is required before filling LVER positions with non-disabled veterans or eligible persons.

(b) Funding and assignment of LVER staff shall be in accordance with 38 U.S.C. 2004. The allocated number of LVER staff shall be assigned by the State agency administrator in accordance with 38 U.S.C. 2004(a)(2)(A).

(c) The State agency must notify and seek the concurrence of the DVET when proposing assignment of LVERs to a LESO in deviation from the statutory formula at 38 U.S.C. 2004(a)(2)(A) and explain how this assignment will result in improved services to eligible veterans.

(d) In the case of a local employment service office/SDP with less than 350 eligible veterans and eligible persons registered at any time during the prior program year at which employment services are offered under the Wagner-Peyser Act, and at which no LVER is assigned, the head of such LESO/SDP will be responsible for ensuring compliance with the provisions of this chapter (chapter IX) regarding priority services for veterans and priority referral of veterans to Federal contractors at no cost to the DVOP/LVER grant, and be responsible for maintaining and having available for review a quarterly report regarding the character of services provided in that SDP.

(e) Each LVER shall be administratively responsible to the manager of the local employment service office and shall provide reports, not less frequently than quarterly, to the manager of such office with copies provided to the DVET for the State regarding the services provided to veterans, and compliance with Federal law and regulations with respect to priorities of service for eligible veterans and eligible persons.

(f) State Agencies will not delegate LVER positions or duties to other State Agencies, county, local or other governmental bodies or any private entity.

§ 1030.116 Duties of LVER staff.

(a) Local veterans' employment representatives shall perform those duties specified in 38 U.S.C. 2004(b).

(b) All LVER staff will be assigned to a local employment service office, except when designated as noted below to perform pre-separation services (Transition Assistance services).

(c) When authorized, an LVER located near a military installation shall be expected to participate in pre-separation briefings, if needed, and may serve at that facility if the number of separating military personnel warrant that action and a Memorandum of Understanding between the State agency, military installation and DVET is effected outlining the duties to be performed.

(d) The SESA shall develop and apply performance standards for each LVER consistent with the duties and responsibilities described for the LVER and the requirements of § 1030.130 of this part.

§ 1030.120 Funding for the DVOP/LVER program.

(a) Funding for the DVOP and LVER Program is provided annually to the States through grants and/or grant modifications which are announced by the ASVET.

(b) Staff positions to be funded through the grant process are as defined by the formulas contained in 38 U.S.C. 2003A(a)(1) and 2004(a)(1).

(c) States will develop their funding requests based upon the number of DVOP specialists and LVERs allocated, as required by the formulas in 38 U.S.C. 2003A and 2004, respectively, using a projection of cost per staff year data and the most recent year-to-date cost accounting data. Specific information on the form and format for submission will be provided by Solicitation for Grant Application (SGA) or VPL issued by the ASVET.

(d) In the event that appropriations are inadequate to fully fund either or both programs, Agency Limitations will be developed, and State Agencies will be provided with a reduced Notice of Grant Award in an amount proportional to the number of authorized positions in the State. The ASVET will provide guidance for percentage reductions made to funds provided for administrative overhead, and, if sufficient funds are still not available, a proportional number of authorized staff positions may be reduced to reach the level of funds available. In the event that additional funds subsequently become available, the grants to the States may be modified to adjust the funding by increasing the Obligational Authority without exceeding the Agency Limitations for States.

(e) *Lack of Need Waivers.* (1) If the number of LVER staff made available to a State in accordance with the formulas for allocating LVERs in 38 U.S.C. 2004 exceeds the number of locations to which staff can be reasonably assigned, States may request a lack-of-need waiver from the DVET.

(2) Each such waiver request will be reviewed by the DVET who will consult with the State Agency on a final plan before forwarding the plan with recommendations to the RAVET for action.

(f) DVOP/LVER funds are appropriated only to fund the salaries, benefits, expenses and administrative overhead of those directly assigned to full-time DVOP specialists, half-time LVER and full-time LVER staff positions. In no case will any State agency manager in a local employment service office even when or where no LVER is assigned, any area or State administrator or any administrative support staff with general responsibilities for the Employment Service be permitted to charge DVOP or LVER staff time.

§ 1030.122 Grants administration.

(a) Grants provided to the States under this part, to include modifications, are subject to the administrative standards governing grants and agreements as set forth in 29 CFR part 97. Funds provided pursuant to this section are provided in accordance with 38 U.S.C. chapter 41 and compliance will be maintained with all applicable provisions of this chapter.

(b) Grants may be unilaterally modified in writing by the Grant Officer whenever there has been a change in any Federal statute, appropriation, regulation, executive order, or other federal law, which, as determined by the Department, is relevant to the financial assistance provided under the grant.

(c) *Budgetary adjustments.* (1) The ASVET, through the RAVET, will make quarterly reviews of funding obligations and expenditures and recapture uncommitted funds for redistribution to other States as necessary.

(2) Ninety-five percent (95%) of non-excepted uncommitted funds may be recaptured for redistribution among States as necessary in accordance with instructions issued by the ASVET for this purpose. The ASVET may modify this percentage as appropriate from year to year.

(3) The State will submit quarterly financial reports within thirty (30) days of the end of a fiscal quarter through the DVET, to the RAVET for the purpose of determining what funds, if any, can be recaptured. If a State can document and certify to the DVET that an amount was not obligated during a quarter due to extenuating circumstances, but the amount will be utilized later in the fiscal year for the same program activities/functions and the original purposes intended, the amount will not be included in the unobligated balance subject to recapture. The DVET will

recommend such redistribution to the RAVET. The RAVET must inform the Grant Officer in the manner prescribed by the ASVET when such redistributions are approved.

(i) Funds exempted from recapture may be utilized only for the original purpose as stated in the grant if exempted from recapture.

(ii) If the State certifies to the RAVET that an amount was expended but was not reflected in the official cost accounting reports, the amount will not be included in the unobligated balance subject to recapture. An amended cost accounting report must accompany the request, or follow it, as arranged in advance.

(iii) Expenditures improperly charged to the DVOP/LVER grants will be recaptured in the manner prescribed by the ASVET.

(iv) In cases of non-compliance with grant provisions, the RAVET may adjust funds for the amount of the disallowance.

(4) The RAVET will provide the obligational authority for additional funds based upon the approved agency limitation and Grant Officer approved modification requests. All modifications which change agency limitations will be established through the issuance of Notifications of Obligational Authority (NOAs).

(d) *Information access.* The State Agency will provide the RAVET, DVET and ADVETs with access to regular and special internal State Agency reports, to include audits, personnel records including grantee time distribution, travel vouchers, individual performance standards, or personal performance appraisals, and client records (including applicant and employer records, and counseling cases maintained at LESOs) which relate, in whole or in part, to the quality, quantity, and character of services to veterans and/or eligible persons.

(e) *Annual Financial Reconciliation of Multi-Year Grants.* Each State Agency shall annually:

(1) Conduct a financial reconciliation between the Department and the grantees records for expenditures, obligations, and Letter of Credit (LOC) drawdowns or Treasury check payments based on procedures specified by the Department.

(2) Verify that property records are being maintained in accordance with Departmental and VETS policies and regulations.

(3) Ensure that audits are conducted according to the requirements outlined in 29 CFR part 96 and described at 29 CFR 97.26.

(4) Audits will be used to complete initial closeout of the financial aspects of grant operations for those completed annual plans covered by the announced audit period. Upon resolution of all audit issues for that period of time, the grant will be considered "partially closed" which, for milti-year grants, means that except when questions of fraud or malfeasance are raised, no further administrative action is required for the time period covered by the audit.

(5) If the State agency fails to cooperate and provide the information required to complete the "partial closeout" of a multi-year grant, the Department has the authority to suspend funding of a grant or agreement until compliance with the established requirements is achieved.

(6) The reconciliation process, aside from audit, should be completed no later than 30 days after receipt of the final expenditure reports for each funding cycle and never more than 90 days beyond the end of the grant.

(f) *Final closeout of a multi-year grant.* Grants shall be closed out according to instructions issued by the ASVET.

(g) *Remedial actions.* When a grantee has failed to comply with the terms, conditions or standards of the grant, the provisions of this chapter at 1020.107 and 29 CFR part 97 apply.

(h) *Site visits.* VETS Staff have the right, at all reasonable times, to make site visits; to review records; evaluate program or project accomplishments and management control systems; to provide such technical assistance as may be required; and to include any subcontractors under any grant awarded by the ASVET. Subcontractors are required to provide all State agency records and reasonable facilities and assistance for the safety and convenience of the ASVET representatives in the performance of their duties.

§ 1030.125 Reporting requirements.

(a) *Identification.* Reports and related correspondence must be identified by the applicable federal grant number appearing on the Notice of Grant Award. Document control numbers will also be used upon financial documents and reports used within the Region.

(b) *Performance and financial reports*—(1) *DVOP and LVER Workload Activity Reports (VETS–200).* State agencies will submit a Workload Activity Report on a Program year-to-date basis, statewide and by LESO and SDP.

(2) *ES Activity Report (ETA–9002).* Each grantee will provide a copy of the quarterly report required of the State agency by the Employment and Training Administration, regarding services provided to applicants by the State agency to the DVET each quarter. If requested and available, individual reports for each LESO will be provided to the DVET.

(3) *Local Office Reports on services to veterans.* The grantee will furnish the DVET a copy of each Manager's Report on Services to Veterans, prepared at least once each quarter by the LVER pursuant to 38 U.S.C. 2004(c), where assigned, which will contain, at minimum, the following information:

(i) Compliance with the quantitative Veterans' Standards of Performance pertinent to services to veterans [38 U.S.C. 2007 (b) and (c)(2)];

(ii) The quantity and quality of services provided to verterans by the LESO and/or other SDPs under the supervision of the manager [38 U.S.C. 2004(c)].

(4) *Grant staffing chart.* A current DVOP/LVER staffing chart or table will be attached to each grantee's quarterly technical performance report and include all status changes in DVOP/LVER personnel, new appointments or assignments; and identify the DVOP staff in a State with designated outstation responsibilities and the amount of time by hours, spent each week in outstationed activities that quarter.

(5) *Financial Activity Report (VETS 300).* A quarterly and annual (final) financial activity report. The annual final financial activity report will be submitted within 90 days after the end of the fiscal year, and will include a narrative explanation of deviations greater than five percent (5%) from the plan.

(6) *Federal Cash Transaction Reports (SF 272).* A Federal cash transaction report will be submitted within 30 days from the end of each quarter. Regular submission of this report to the DVET and Grant Office is necessary to ensure timely processing of requests for advances or reimbursements.

(7) *Quarterly Technical Performance Report.* The State Agency will submit a quarterly technical performance narrative regarding achievements or failures to adhere to plans relative to the VETS 200, VETS 300, and Veterans' Performance Standards. The narrative is to contain the following information on performance of the DVOP and LVER program resources:

(i) A comparison of actual cumulative year-to-date statewide accomplishments of program staff to the overall accomplishments, goals and standards negotiated and established to measure

State agencywide services to veterans through the end of the reporting period (VETS–200);

(ii) An identification and explanation whenever nonveterans were served by the DVOP staff and/or full-time LVERs, according to the VETS–200 Reports;

(iii) Reasons for failure to meet the established quantitative Veterans' Performance Standards;

(iv) A report explaining any staff vacancies which result in deviations from the quarterly planned expenditures by either more, or less, than fifteen percent (15%);

(v) Corrective actions taken in response to any monitoring reports submitted by the DVET;

(vi) Any special activities that may have affected services to veterans and/or performance of the DVOP or LVER program staff.

(c) *Due Date of reports.* All reports from the SESA on the Administration of the grant are due in the office of the DVET not later than thirty (30) days after the end of the calendar quarter covered by the report. This includes submission of the reports noted in § 1030.125(b) (1) through (7). In addition, final reports are due as follows:

(1) A final Technical Performance Narrative Report for the program year which ended on June 30 shall be submitted with the final Workload Activity report (VETS 200) not later than September 30 and will summarize the DVOP/LVER program accomplishments, activities, corrective actions and conclusions.

(2) A final financial activity report (VETS 300) will be submitted within 90 days after the end of the fiscal year, including a narrative explanation for deviations of more or less than 5% from the plan.

(d) *Distribution of Reports.* (1) One original copy of each required report will be concurrently submitted to:

(i) Director for Veterans' Employment and Training for the State; and,

(ii) Grant Officer, DVOP/LVER Grants Office of Procurement Services USDOL, OASAM, NCSC, 200 Constitution Avenue NW., Room S–5526, Washington, DC 20210.

(2) The grantee shall provide the DVET copies of the VETS–200, VETS–300, and ETA–9002 reports on a double density, double sided, IBM compatible diskette in flat file ASCII format. All of the data should be formatted on the disk exactly as it appears on reports currently submitted in paper format. States without the data-processing capability to provide IBM compatible diskettes may continue to provide reports in hard copy until such time as they attain that capability.

(3) Federal Cash Transactions Reports (SF 272) are due to the DVET and Grant Officer within 30 days following the end of the quarter.

(Paragraphs (b)(1), (b)(2) and (b)(5) are approved by the Office of Management and Budget under control number 1205–0240)

§ 1030.130 Performance standards for DVOP/LVER Staff.

(a) Pursuant to 38 U.S.C. 2004A(a)(3)(A), prototype performance standards provided by the ASVET are used in developing State Agency performance standards for DVOP and LVER staff.

(b) Prototype performance standards are developed in consultation with the SESA administrators.

(c) The SESA may request the assistance of the DVET in preparation of the performance standards and to assure that requirements as outlined in 38 U.S.C. 2004A have been met.

(d) In developing such performance standards, the State agency shall be consistent with the requirements of 38 U.S.C. 2003(b) and 2004(b) (1) through (12) and must take into account:

(1) The prototype performance standards issued by the ASVET;

(2) The requirements of the State Civil Service/Merit system and local area requirements;

(3) Comments received from the DVET in paragraph (e) of this section.

(e) The State Agency must submit a copy of the proposed performance standards to the DVET for comment. This submission must include a statement which outlines deviation from the prototype standards provided by the ASVET and the rationale thereof. The DVET will review the proposed performance standards and provide the State Agency with comments and constructive suggestions on improvements, if appropriate. Any change in the SESA standards must be submitted to the DVET for comment prior to implementation.

PART 1040—JOB TRAINING PARTNERSHIP ACT (JTPA), TITLE IV, PART C—VETERANS' EMPLOYMENT PROGRAMS

Subpart A—General Provisions

1040.100 Scope and purpose.
1040.110 Program administration.
1040.120 Participant eligibility.

Subpart B—Program Funding

1040.210 Availability of funds.
1040.220 Eligibility for funds.
1040.230 Application for funding.
1040.250 Approval of funding requests.

Subpart C—Program Design and Management

1040.310 General.
1040.320 Allowable activities.
1040.330 Program Management and performance standards.
1040.340 Recordkeeping and reporting requirements.
1040.350 Monitoring and oversight.

Authority: 29 U.S.C. 1721.

Subpart A—General Provisions

§ 1040.100 Scope and purpose.

This part contains the regulations governing the Veterans' Employment Programs authorized under title IV, part C of Job Training Partnership Act (the "Act") (29 U.S.C. 1721). Program administration and participant eligibility are included in this subpart. Planning and application for funding are set forth in subpart B of this part. Program design, management, and reporting are covered in subpart C of this part.

§ 1040.110 Program administration.

These programs are to be designed to meet the employment and training needs of service-connected disabled veterans, veterans of the Vietnam era, and veterans who are recently separated from military service.

(a) Programs supported under this part shall be administered by the Assistant Secretary for Veterans' Employment and Training (ASVET).

(b) All programs and activities supported under this part will be coordinated, to the maximum extent feasible, with other programs and activities under JTPA, the Wagner-Peyser Act, title 38 the United States Code, and other employment and training programs at the State and local level.

(c) The ASVET may establish annually a program emphasis which targets resources to specific subsets of eligible veterans or for specific purposes.

§ 1040.120 Participant eligibility.

Eligibility for participation in programs supported under this part shall be consistent with 29 U.S.C 1721 and the definition of the veterans under this part, and as prescribed by the ASVET to meet the employment and training needs of veterans and separating military personnel.

Subpart B—Program Funding

§ 1040.210 Availability of funds.

(a) Funds available under this part will be distributed based on the program emphasis prescribed by the ASVET under § 1040.110(d) of this part, after adequate public notice. The ASVET may distribute funds consistent with funds provided States under the DVOP/LVER

funding formula, with deviations to account for better proposed performance or special programs to serve those most in need; and may set aside funds for research and development activities, demonstration projects, providing technical assistance and training, or to support other veteran's and eligibles' employment and training efforts as deemed appropriate.

(b) Funds available under this part may be distributed by the ASVET directly through grant or contract to the various States, designated Governor's State administrative entities, State Employment Service Agencies, service delivery area administrative entities, or private non-profit entities.

(c) The ASVET will publish annually planning estimates by State for funds expected to be available under the Act for States' distribution and estimates of funds set aside for research and development activities, demonstration projects, technical assistance and training, or to support other veterans' and eligibles' employment and training efforts.

§ 1040.220 Eligibility for funds.

(a) The ASVET may require applicants to demonstrate that they will either provide direct funding in an amount proportionate to the amount of the grant from funds other than those from this chapter (chapter IX); or provide in-kind services from other sources in an amount proportionate to the amounts requested in the grant application. The provisions of 29 CFR 97.24 regarding cost sharing requirements are not applicable to this requirement.

(b) Programs supported under this part may be conducted through public agencies and private non-profit organizations as noted in 29 U.S.C. 1721(a)(2) and for the purposes noted in 29 U.S.C. 1721(a)(3).

§ 1040.230 Application for funding.

(a) For funding under § 1040.210(b) of this part, applications should be submitted in response to the Annual Solicitation for Grant Applications which will contain program information, requirements for applications for funds and instruction for application submittal.

(b) Application for funding under the set-aside provisions of § 1040.210(a)(2) should be submitted in response to program specific Requests for Proposals (RFPs) or as indicated in the public notice issued pursuant to § 1040.210(d) of these regulations. All proposals and requests for information under this section shall be submitted to: Director, Office of Procurement Services, U.S. Department of Labor, 200 Constitution Avenue, NW., room 2–5521–FPB, Washington, DC 20210.

(c) Unsolicited proposals for funding under § 1040.210(a)(2) may be submitted at any time and should be directed to the Office of the Assistant Secretary for Veterans' Employment and Training, United States Department of Labor, room S–1313, 200 Constitution Avenue, NW. Washington DC 20210.

(d) The ASVET may utilize funds through grant and/or contract for activities, programs and studies that further the purposes of the Act.

§ 1040.250 Approval of funding requests.

(a) The ASVET will be responsible for the approval, awarding and distribution of funds under this part.

(b) An applicant whose grant application is not selected by the Department for funding under this part shall be notified in writing.

(c) Any applicant whose grant application is denied by the Department may request an administrative review by the ASVET.

(d) No applicant will begin program operations until a Notice of Grant Award has been signed by the Grant Officer.

Subpart C—Program Design and Management

§ 1040.310 General.

(a) The provisions of 20 CFR part 626, relating to complaints, investigations, and hearings for programs under title IV of the JTPA, and the provisions of 29 CFR part 31 and 32 relating to complaints of discrimination are applicable to programs under this part.

(b) The requirements of 29 CFR parts 96, 97, and 98, implementing the Single Audit Act, uniform administrative requirements for grants and cooperative agreements, and governmentwide debarment and suspension (nonprocurement) apply to grants and agreements under this part.

(c) The provisions related to non-compliance set forth in 20 CFR 1020.107 apply to recipients of grants under this subpart.

§ 1040.320 Allowable activities.

Programs supported under this part shall include, but not be limited to:

(a) Activities to enhance services provided veterans and eligibles by other providers of employment and training services funded by Federal, State, or local government;

(b) Activities to provide employment and training services to such veterans not adequately provided by other public employment and training service providers; and,

(c) Outreach and public information activities to develop and promote maximum job and job training oportunities for such veterans and to inform such veterans about employment, job-training, on-the-job training and educational opportunities under titles 29 or 38 United States Code, or to better coordinate provision of services to eligibles under title 38, United States Code.

§ 1040.330 Program management and performance standards.

Each recipient of funds under this part shall be required to adhere to grant or contract provisions governing accountability, fiscal control and management, and specific program performance standards as established by the ASVET.

§ 1040.340 Recordkeeping and reporting requirements.

(a) Required fiscal and program records and reports will be in accordance with the provisions contained in each grant document or contract instrument.

(b) Grant and contract recipients from time to time may be required to prepare and submit additional reports which may be required by the Congress or the ASVET.

§ 1040.350 Monitoring and oversight.

(a) The Secretary, through the Assistant Secretary for Veterans' Employment and Training, is responsible for the monitoring and oversight of veterans' employment and training programs under this Act. Regional Administrators for Veterans' Employment and Training and Directors for Veterans' Employment and Training in each State will have access to all records necessary for program monitoring and oversight as noted in 20 CFR 1030.125.

(b) The audit provisions contained in 20 CFR 629.42 will apply to funds granted to States under this Part.

(c) All recipients of funds under this part will arrange for audits to be conducted in accordance with the provisions of 2 CFR 629.42.

(d) The provisions of 20 CFR 629.44 regarding sanctions for violations of the Act apply for all grants and agreements under this part. The Secretary may hold all direct recipients of funds under this program responsible for misexpenditures of grant funds to the same extent and in the same manner as the Governor is held responsible under 20 CFR 629.44.

PART 1045—TRANSITION ASSISTANCE PROGRAMS [RESERVED]

PART 1050—PROGRAMS FOR HOMELESS VETERANS [RESERVED]

PART 1060—NATIONAL VETERANS' TRAINING INSTITUTE [RESERVED]

PART 1070—SECRETARY'S COMMITTEE ON VETERANS' EMPLOYMENT [RESERVED]

PART 1080—FEDERAL CONTRACTOR REPORTING PROGRAM [RESERVED]

PART 1090—VETERANS' REEMPLOYMENT RIGHTS PROGRAM [RESERVED]

CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

PART 626—INTRODUCTION TO THE REGULATIONS UNDER THE JOB TRAINING PARTNERSHIP ACT

2. The authority citation for part 626 continues as follows:

Authority: 29 U.S.C. 1579(a); Sec. 6305(f), Pub. L. 100-418, 102 Stat. 1107).

§ 626.1 [Amended]

3. Section 626.2 is amended by removing from paragraph (a) the citation "Part 1005" and by adding in lieu thereof the citation "Part 1040".

§ 626.3 [Amended]

4. Section 626.3 is amended:

a. By removing from the introductory text the citation "1005" and by adding in lieu thereof the citation "1040";

b. By removing from the consolidated table of contents the entry part 1005 of chapter IX; and

c. By adding to the consolidated table of contents an entry for part 1040 of chapter IX, to read as follows:

§ 626.3 Table of contents for the regulations under the Job Training Partnership Act.

* * * * *

PART 1040—VETERANS' EMPLOYMENT PROGRAMS UNDER TITLE IV, PART C, OF THE JOB TRAINING PARTNERSHIP ACT

Subpart A—General Provisions

Sec.
1040.100. Scope and purpose.
1040.110. Program administration.
1040.120. Participant eligibility.

Subpart B—Program Funding

1040.210. Availability of funds.
1040.220. Eligibility for funds.
1040.230. Application for funding.
1040.240. Approval of funding requests.

Subpart C—Program Design and Management

1040.310. General.
1040.320. Allowable activities.
1040.330. Program management and performance standards.
1040.340. Recordkeeping and reporting requirements.
1040.350. Monitoring and oversight.

PART 658—ADMINISTRATIVE PROVISIONS GOVERNING THE JOB SERVICE SYSTEM

5. The authority citation for part 658 is revised to read as follows:

Authority: 29 U.S.C. 49k; 38 U.S.C. chapters 41 and 42.

6. Section 658.700 is amended by redesignating the existing text as paragraph (a) and by adding a new paragraph (b), to read as follows:

§ 658.700 Scope and purpose of subpart.

* * * * *

(b) This subpart also sets forth the procedures which the Office of the Assistant Secretary for Veterans' Employment and Training (OASVET) shall follow upon either discovering independently or receiving from other(s) information indicating that State agencies may not be adhering to "JS regulations" (which, for such purposes, shall mean the OASVET regulations at 20 CFR parts 1020 and 1030). For the purposes of this paragraph (b) references to "ETA" mean OASVET, references to "ETA Regional Administrator" mean Regional Administrator for Veterans' Employment and Training (RAVET), and references to "JS regulations" mean 20 CFR parts 1020 and 1030. See also 20 CFR 1020.107.

Signed at Washington, DC this 31st day of January, 1991.

Roderick A. DeArment,

Acting Secretary of Labor.

[FR Doc. 91-2759 Filed 2-6-91; 8:45 am]

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Thursday
February 7, 1991

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

Interim Exemption for the Taking of Marine Mammals Incidental to Commercial Fishing Operations; Notice of Final List for Fisheries for 1991

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 900514-1016]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Interim Exemption for Commercial Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final List of Fisheries for 1991.

SUMMARY: NMFS issues this final List of Fisheries for 1991 associated with the interim exemption for commercial fisheries under section 114 of the Marine Mammal Protection Act of 1972 (MMPA) to become effective February 7, 1991. Section 114 of the MMPA, added by Public Law 100-711, provides for a 5-year exemption for certain incidental takings of marine mammals in the course of commercial fishing. The original list was published on April 20, 1989 (54 FR 16072).

EFFECTIVE DATES: The List of Fisheries becomes effective February 7, 1991. Vessel owners who are now in Category I or II for the first time have until March 11, 1991, to register.

FOR FURTHER INFORMATION CONTACT: Herbert W. Kaufman, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910, 301-427-2319; John Sease, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, 907-586-7235; Brent Norberg, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, WA 98115, 206-526-6110; James Lecky, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731-7415, 213-514-6664; Douglas Beach, Northeast Region, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930, 508-281-9254; or Jeffrey Brown, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702, 813-893-3366.

SUPPLEMENTARY INFORMATION: Section 114 of the MMPA establishes an interim exemption for the taking of marine mammals incidental to commercial fishing operations and requires NMFS to publish a List of Fisheries, along with the marine mammals and number of vessels or persons involved in each such fishery, in three categories, as follows:

(I) A frequent incidental taking of marine mammals;

(II) An occasional incidental taking of marine mammals; or

(III) A remote likelihood, or no known incidental taking, of marine mammals.

Based on Congressional guidance, NMFS interpretation of the 1988 Amendments, public comment and meetings and consultations with state and Federal agencies, Regional Fishery Management Councils, and other interested parties, NMFS published a List of Fisheries on April 20, 1989 (54 FR 16072). NMFS also published an interim rule governing the taking of marine mammals incidental to commercial fishing operations on May 19, 1989 (54 FR 21910), and a final rule governing reporting of the take of marine mammals incidental to commercial fishing operations on December 15, 1989 (54 FR 51718). All determinations concerning issuing and maintaining the List of Fisheries were made in the process of promulgating the interim rule.

The following criteria were used in classifying fisheries in the List of Fisheries:

Category I. There is documented information indicating a "frequent" incidental taking of marine mammals in the fishery. "Frequent" means that it is highly likely that more than one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period.

Category II. (1) There is documented information indicating an "occasional" incidental taking of marine mammals in the fishery, or (2) in the absence of information indicating the frequency of incidental taking of marine mammals, other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, and species and distribution of marine mammals in the area suggest there is a likelihood of at least an "occasional" incidental takin in the fishery. "Occasional" means that there is some likelihood that one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period, but that there is little likelihood that more than one marine mammal will be incidentally taken.

Category III. (1) There is information indicating no more than a "remote likelihood" of an incidental taking of a marine mammal in the fishery, or (2) in the absence of information indicating the frequency of incidental taking of marine mammals, other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, and species and distribution of marine mammals in the area suggest there is no more than a remote likelihood of an incidental take in the fishery. "Remote likelihood" means that it is highly unlikely that any marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period.

Section 114(b)(1)(C) of the MMPA as implemented by 50 CFR 229.3(a)(1) requires the Assistant Administrator for Fisheries, NMFS, to publish a proposed revised List of Fisheries for 1991 on or about July 1, 1990. On July 17, 1990, (55 FR 29078) NMFS published a notice of proposed changes to the current List of Fisheries and annual request for comments and information on the proposed revised List of Fisheries for 1991.

Twenty-seven comments were received in response to the proposed changes from state and Federal agencies, fishing associations, fishermen, a conservation group, and other interested parties. These comments (along with the proposed changes) are summarized below and were considered in developing the List of Fisheries for 1991, which will become effective on February 7, 1991. A summary of the changes to the List of Fisheries for 1991 appears after the comments sections.

General Comments and Responses

One commenter claimed that deployment of set or drift gillnets in waters where marine mammals occur invariably results in takes and that adequate observation of these fisheries is incumbent on NMFS.

NMFS does not agree. Each gillnet fishery operates within unique conditions of water depth, currents, target species, season length, fishing hours, net deployment regulations, and gillnet length, height, and mesh size. The species and number of marine mammals present and the relative frequency of interaction also varies greatly. The 1988 Amendments to the MMPA extend to NMFS the authority for mandatory placement of observers only in Category I fisheries. Not all gillnet fisheries have frequent incidental takes that would place them in Category I.

One commenter noted that, for most fisheries, little new information is available since the original List of Fisheries was proposed in January 1989.

Although new information has been obtained through observer programs and research since the original List of Fisheries, most of these data are preliminary. Information that supports changing a fishery's category has been utilized for the 1991 List of Fisheries.

One commenter stated that vessels placed in Category I would be required

to display decals and carry certain papers on board, while vessels participating in a similar fishery in Category II using similar gear would not be required to display a decal and carry documentation.

The conditions for displaying a decal, carrying a valid exemption certificate on board, and maintaining a daily log are required of both Category I & II vessel owners. While Category I vessel owners are required to carry an observer if requested by NMFS, there is no observer requirement for Category II vessel owners.

Comments and Response on the Proposed Changes

The following discussion parallels, and uses the numbering of items appearing in, the proposed changes published July 17, 1990 (55 FR 29078).

(1) Add to Category I—Gillnet fisheries in the Atlantic Ocean for swordfish, tuna, and shark.

All commenters on this proposed change favored the addition of this fishery to Category I. A definition of gillnet for this fishery was also requested.

The fishery has been added to Category I (see response for proposed change #2 below). NMFS has not defined gear used in a particular fishery for categorization purposes. We defer to the regulatory action that governs a fishery for the specifications of a gear type.

(2) Add to Category II—Gillnet fisheries in the Caribbean and Gulf of Mexico for swordfish, tuna, and shark.

All commenters on this proposed change stated that this fishery should be included in Category I along with the Atlantic Ocean fishery.

Upon further investigation it has become evident that the swordfish, tuna, shark gillnet fishery that takes place in the Atlantic Ocean, Caribbean, and Gulf of Mexico is a single fishery. Most vessels registered to fish for swordfish, tuna and shark carry both longline and gillnet gear, are highly mobile and conduct fishing operations on a seasonal schedule throughout the ranges of the target species (landings have been reported in all three areas). It is also recognized that it is the same stocks, of the three target species, that occur in the Atlantic, Caribbean, and Gulf of Mexico. Therefore, based on the information gathered during the voluntary observer program, the Caribbean and Gulf of Mexico swordfish, tuna, shark gillnet fishery and the Atlantic Ocean swordfish, tuna, shark gillnet fishery are combined to form the Category I Atlantic Ocean, Caribbean, Gulf of Mexico swordfish, tuna, shark gillnet fishery.

(3) Recategorize the Florida East Coast shark gillnet fishery (Category III) to Category II.

Several commenters stated that this fishery should be placed in Category I along with the other East Coast gillnet fishery.

NMFS does not have documented information to indicate that takes in this fishery occur at a frequent level. Therefore, this fishery is placed in Category II so information can be obtained from vessel owner logs and alternative observer programs.

One commenter stated that this categorization raises the potential for conflict with the regulations prohibiting the use of gillnets in the king mackerel fishery.

The categorization (or recategorization) of a fishery does not regulate or supersede regulations governing a fishery. The exemption program allows fishermen who participate in Category I or II fisheries to legally fish by registering and receiving an exemption (50 CFR 229.5(a)).

(4) Recategorize Trawl Fisheries, Southern New England (SNE), Mid-Atlantic (MDA) Inshore Squid (Category III), by combining it with the Category II, Trawl Fisheries, SNE, MDA Offshore Squid to form the Category II, Trawl Fisheries, SNE, MDA Squid.

Most commenters agreed with this proposed change. One commenter suggested that the incidental take of marine mammals is frequent rather than occasional because of the information provided with the proposed change. This commenter also states that the SNE, MDA squid trawl fishery is similar to the offshore squid and mackerel fisheries conducted by foreign trawlers which have a documented frequent incidental take of marine mammals.

NMFS provided information on the categorization of the foreign mackerel trawl fishery in SNE and MDA in the January 27, 1989, proposed List of Fisheries and the April 20, 1989, List of Fisheries. (The foreign mackerel trawl fishery had 100 percent observer coverage from 1984–1988 with a documented take of one marine mammal every 10 days.) The SNE, MDA offshore squid fishery was originally placed in Category II because observer reports from joint venture operations indicated 33 marine mammals were taken from 1985–1988. Therefore, NMFS will combine the fisheries as proposed.

(5) Add to Category III the squid trawl fishery for the Gulf of Maine to cover vessels landing squid in that area.

Commenters stated that this fishery should be included with the Category II squid fishery.

After further investigation it became evident that squid are rarely landed in the Gulf of Maine (GME) with trawl gear. Squid are usually only landed as a by-catch in the groundfish or shrimp bottom trawl fisheries (both of which are in Category III). Marine mammal distribution in the GME is very different from the Mid-Atlantic area, where mammal and squid populations are closely related both temporally and spatially. The likelihood of mammals being taken in trawl gear operating in the GME is remote. When fishermen are participating in a particular fishery, the by-catch is handled according to the procedures set for the fishery. Accordingly, this fishery is not added to the List of Fisheries.

(6) Recategorize the longline/set line sablefish fisheries, Western Gulf of Alaska and the Bering Sea along the western tip of the Alaska Peninsula and the Aleutian Islands (which is currently included in the longline/set line Alaska groundfish fishery, Category III), to Category II, by combining it with the Category II Alaska Southern Bering Sea longline/set line sablefish fishery to form the Alaska Southern Bering Sea, Aleutian Islands, and Gulf of Alaska (Unimak Pass and westward) longline/set line sablefish fishery (NMFS Statistical areas 515, 517, 540, and 61).

One commenter agreed with the recategorization of sablefish longline fisheries in the Western Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands (BSAI) and their inclusion in Category II. Another commenter agreed that these fisheries should be in the same category, but questioned whether or not Category III would be more appropriate.

Data are not currently available to determine accurately the rate of take in the GOA/BSAI sablefish longline fishery, although NMFS is aware that takes continue to occur. Because historic information and observer data indicate that interactions have occurred in Prince William Sound, in the southern Bering Sea, and along the Aleutian Islands, even though not in other areas of Alaska, placement in Category III would be inappropriate at this time.

(7) Redefine the Alaska Peninsula drift gillnet fishery (Category I) as the South Unimak (False Pass and Unimak Pass) drift gillnet fishery; and

(8) Add the Alaska Peninsula (other than South Unimak) drift gillnet to Category II.

Some commenters supported the proposed redefinition of the Alaska

Peninsula (other than South Unimak) drift gillnet fishery and its distinction from the Unimak and False Pass (South Unimak) fishery. Other commenters stated that it is inappropriate to move the Alaska Peninsula drift gillnet fishery from Category I to Category II without supporting evidence from observer programs.

Congress intended that the Unimak Pass and False Pass salmon drift gillnet fisheries should be in Category I for the first year that section 114 of the MMPA and the Marine Mammal Exemption Program are in effect. As described in the Notice of Proposed Changes to the current List of Fisheries, NMFS believes that it incorrectly included all salmon gillnet fisheries along the Alaska Peninsula in Category I rather than including only those fisheries in Unimak and False passes, as identified by Congress.

Some commenters pointed out that, in the opinions of state resource managers who are most familiar with the area, the South Unimak drift gillnet fishery does not belong in Category I. One commenter noted that the Alaska Department of Fish and Game research vessel *Resolution* worked in the fishery during June 1988 and did not observe or hear of any marine mammal interactions and the alternative observer program, mandated under the 1988 Amendments to the MMPA, recorded only one lethal take of a marine mammal in 91 observer days in the South Unimak fishery in 1990. Commenters also noted the fishing season in South Unimak has been much shorter in recent years than it was historically.

NMFS agrees that this low observed rate of interaction corroborates the opinions of persons knowledgeable about the fishery and is moving the fishery to Category II.

For the purposes of gathering information from vessel owner logbooks, NMFS is keeping South Unimak separate from the other Alaska Peninsula gillnet fisheries.

A commenter claimed that unpublished information from the State of Alaska indicates that "frequent interactions" occur between marine mammals and gillnet fisheries north of the Alaska Peninsula.

NMFS is not aware of any such unpublished reports and cannot comment further without the sources of information identified.

(9) Recategorize the Oregon sea urchin fishery (Category III) to Category II Dive, Hand/Mechanical Collection Fisheries.

A number of commenters expressed their belief that the Oregon sea urchin dive fishery should not be moved from Category III to Category II. One commenter reported having never heard of an incidental take of marine mammals in the dive fishery. Another felt that divers working in the water would be vulnerable to angry Steller sea lions and, therefore, would not be inclined to take them. It was also reported that fewer than 20 boats were actively operating in the sea urchin fishery from the principal ports near the reef complexes where Steller sea lion rookeries are located. Another commenter pointed out that the State of Oregon has instituted an administrative rule limiting sea urchin harvest in the vicinity of Steller sea lion rookery rocks during the breeding season. Several commenters focused their comments on data presented by the State of Oregon regarding the status of Steller sea lions in Oregon.

NMFS proposed the recategorization of the Oregon sea urchin fishery based on data received from the State of Oregon indicating that Steller sea lion behavior on the major rookery rocks in Oregon, characterized by non-attendance of adult animals during the daylight hours, may be linked to increased activity on the reef concurrent with the growth of the sea urchin fishery there. In addition, information from the U.S. Fish and Wildlife Service (USFWS) indicates that Steller sea lions are driven from the rocks by the close approach of vessels involved in the sea urchin fishery. The extent and/or frequency of these incidental takings have not been documented. However, the growth of the sea urchin fishery appears to be the single most significant change in the use of the reef complex.

Since the proposed changes to the List of Fisheries were compiled, the State of Oregon has instituted 1000 foot (304.8m) buffer zones around major rookery rocks in southern Oregon based on data collected by its Department of Fish and Wildlife. In addition, there have been a series of public education meetings, held by the state, to increase the awareness of reef users, including sea urchin divers, of the potential for disturbance of Steller sea lions and other species by approaching vessels. NMFS has not received information that indicates incidental taking of other marine mammal species by the sea urchin fishery has a greater than remote likelihood. NMFS further anticipates the new restrictive regulations and public education programs will substantially reduce or eliminate the potential for incidental taking of marine mammals by the sea urchin fishery. For these reasons, NMFS will not recategorize the Oregon sea urchin fishery at this time.

NMFS will cooperate with the Oregon Department of Fish and Wildlife and USFWS in obtaining data concerning distribution on the major rookeries. If these data indicate that disturbance of Steller sea lion rookeries in Oregon is taking place or that aberrant rookery behavior is continuing, NMFS will consider protective regulations under the Endangered Species Act.

One commenter believes that the listing of the Steller sea lion as threatened under the Endangered Species Act is grounds for recategorization of the Oregon sea urchin fishery to Category I or II.

As explained above, NMFS proposed the category change based on data indicating abnormal rookery behavior in Oregon concurrent with the growth of the sea urchin fishery. The potential for disturbance of these animals by sea urchin fishermen has now been reduced or eliminated by state regulations and public education programs. NMFS was not given authority in the 1988 Amendments to categorize fisheries by the type of animals interacted with, but rather by the frequency of interactions. No other data have been received indicating incidental take of any other marine mammal species by the sea urchin fishery.

One commenter questioned why the Oregon sea urchin fishery is being considered for recategorization while the comparable fishery in Washington is not.

There are no Steller sea lion rookeries in Washington State waters and no data have been received that would indicate the level of incidental taking in Washington is greater than a remote likelihood, therefore, no change for the Washington sea urchin fishery was proposed.

Proposed changes 10 & 11 have not been made; they would have been necessary only if the Oregon sea urchin fishery had been reclassified.

(12) Add to Category III Trawl Fisheries, Groundfish, Alaska State-managed waters of Kachemak Bay, Prince William Sound, and Southeast Alaska.

One commenter stated that the Category III listing is appropriate for these groundfish trawl fisheries. Other commenters questioned the placement of a groundfish trawl fishery in Category III without more substantial supporting information.

In support of the decision to place these fisheries in Category III NMFS provides the following additional information.

Kachemak Bay—Traditionally this has been a very small fishery with few

vessels participating. Because of by-catch problems, primarily of crabs, the fishery will not open in 1991 and probably will not open in the foreseeable future. NMFS has become aware of an additional, small-scale (one or two boats) groundfish trawl fishery that infrequently operates in a small area of adjacent Cook Inlet. This fishery also should be included with these State-managed trawl fisheries.

Prince William Sound—Only a small area in the northwestern part of the Sound is open to groundfish trawling. A maximum of two small vessels have participated during recent yeras.

Southeastern Alaska—Only four areas have been open to groundfish trawling during recent years: Seymour Canal, Stikine River flats, Level Island, and Upper Rocky Pass. Although observer coverage has been variable from the early 1970s to 1989, only one marine mammal (a Dall's porpoise) was recorded in a net in these fisheries in almost 20 years. That porpoise had been "dead for quite some time," suggesting that it may have been a carcass picked up in the net rather than an incidental mortality. The state has no plans to reopen the fisheries in Seymour Canal and the Stikine River flats.

State fisheries managers have no other records of entanglements, serious injuries, or deaths of marine mammals caused by these fisheries.

(13) Clarification of the Category II Atlantic Ocean and Gulf of Mexico Longline fishery for tuna, shark and swordfish to include the Caribbean as an area fished.

One commenter stated that this fishery should be placed in Category I because the interactions are sufficient to warrant two years of data collection in order for informed decision making in 1993.

NMFS does not have nor is it aware of sufficient data to indicate that there are frequent interactions with marine mammals. Therefore, this fishery will be clarified as proposed.

(14) Clarification of the Category II Washington, Puget Sound Gillnet Salmonid Fishery.

One commenter stated that the proposed language intended to clarify the definition of the "Washington Puget Sound Region, including Hood Canal, Strait of Juan de Fuca and river estuaries—set and drift gillnet" fishery, was duplicative and therefore confusing. They proposed instead to use "river mouths in the areas of tidal action" as a more descriptive term.

NMFS agrees that the fishery description should be clarified to define areas of marine mammal habitat where commercial fisheries occur and occasional interactions between the fisheries and marine mammals are likely. To provide this additional information, NMFS will change the fishery definition to:

Washington Puget Sound Region, including Hood Canal, Strait of Juan de Fuca (estuaries and lower river areas subject to tidal action)—Set and Drift Gillnet

Comments Received on the List of Fisheries

General

Several commenters suggested that NMFS should change the category of most Category III fisheries.

The commenters did not provide any new substantial information on why these fisheries should be recategorized and NMFS has no new information relevant to these fisheries since they were placed in Category III. Therefore, without supporting evidence they will not be recategorized.

Bering Sea and Aleutian Islands and the Gulf of Alaska Groundfish Trawl Fisheries

One commenter noted Congressional intent that the BSAI and GOA groundfish trawl fisheries should be in Category I for the first year that section 114 of the MMPA and the Marine Mammal Exemption Program are in effect, but observer programs mandated by the MMPA and the North Pacific Fisheries Management Council recorded very few marine mammals killed in the domestic groundfish trawl fisheries during 1989 and 1990. This low frequency of marine mammal takes suggests that these fisheries should be moved to Category III.

Observers recorded very few incidental takes in the BSAI and GOA groundfish trawl fisheries in 1989 and 1990, indicating that the overall rate of interaction in these fisheries is low. However, few data have been received from the Aleutian Islands area, most logbooks have not yet been received, and analyses of existing information are not completed. Therefore, NMFS does not presently have sufficient information to determine if certain areas and/or times within the BSAI and GOA groundfish trawl fisheries qualify for recategorization. Lacking this information, and a determination of whether fisheries should be partitioned geographically, seasonally, or by other criteria, NMFS believes these fisheries should remain in Category I. When the level of interaction between marine mammals and the BSAI and GOA groundfish trawl fisheries is more clearly defined, NMFS will propose changes as appropriate.

Commenters stated that the BSAI and GOA groundfish trawl fisheries are sufficiently different that they should be separate in the List of Fisheries.

Because the BSAI and GOA groundfish trawl fisheries are managed under separate Fishery Management Plans, NMFS agrees that it is appropriate to separate these fisheries for the list.

Alaska Troll Fisheries for Salmon

Several commenters stated that incidental take of marine mammals is a very rare event in the Alaska salmon troll fishery and the fishery should be moved to Category III.

NMFS agrees that incidental take of marine mammals by entanglement in troll gear is not a significant problem for the Alaska salmon troll fishery. This fishery was placed in Category II because of the likelihood of at least an occasional intentional take to protect catch or gear, as described in the Proposed List of Fisheries and the 1989 final List of Fisheries.

Commenters stated that placement of the Alaska salmon troll fishery in Category II in response to an observed decline in Steller sea lions is inappropriate, especially because that decline occurs far to the west of the troll fishery.

NMFS published a final rule on November 26, 1990 (55 FR 49205), listing the Steller sea lion as threatened under the Endangered Species Act (ESA). This action was in response to observed declines of as much as 63 percent since 1985 and 82 percent since 1960 in the numbers of Steller sea lions counted at selected rookeries in central and western Alaska. The listing of the Steller sea lion under the ESA is unrelated to the classification of fisheries under the 1988 Amendments to the MMPA.

One commenter stated that NMFS' placement of the Alaska salmon troll fishery in Category II based on out-dated and anecdotal information from California was erroneous, unreasonable, arbitrary, and capricious. The commenter also believes that the use of log reports from California, Oregon, Washington, and Alaska trollers collected through the discontinued Certificate of Inclusion (CI) program also erroneously misrepresents the Alaska fishery. The commenter further claimed that CI logs were submitted only when they included marine mammal interactions, inflating the reported rate of interactions.

NMFS did not apply the information concerning troll fisheries in California, Oregon, and Washington directly to the salmon troll fishery in Alaska. Rather,

that information led to the reasonable suggestion that the same or similar fishing gear and target fish species, when used in Alaskan waters near the same or similar marine mammal species, could potentially result in similar conflicts. NMFS requested annual reports from all fishermen who obtained a CI, not just those with interactions with marine mammals to report. CI log reports from trollers who fished in Alaska, albeit a small and non-random sample of all Alaska trollers, confirmed that interactions between marine mammals and trollers occurred in Alaska, and some of those interactions resulted in mortalities of marine mammals. NMFS did not use CI log reports to estimate rates of take.

A commenter stated that data do not exist to prove that the Alaska salmon troll fishery belongs in Category II, and lacking such evidence, NMFS should have placed the fishery in Category III. In effect, the burden rests with NMFS to prove that the Alaska salmon troll fishery belongs in Category II.

As described above, NMFS determined that there was reasonable information to suggest that interactions occurred, but insufficient information to place the fishery in Category I or Category III. NMFS does not agree that all fisheries should be placed in Category III until proven otherwise.

A commenter stated that the increasing number of Steller sea lions in southeast Alaska demonstrates that Alaska salmon trollers are not having an adverse impact on the species.

The fact that Steller sea lions in southeast Alaska are not decreasing at rates occurring elsewhere in Alaska does not necessarily mean that trollers are not having an adverse impact on the species. Other factors, such as an incidental take rate below the recruitment rate, may give the appearance of a stable population. Also, the 1988 Amendments to the MMPA instructed NMFS to place fisheries into one of three categories depending on whether they have frequent, occasional, or a remote likelihood or no known taking of marine mammals. NMFS was not granted the authority to categorize fisheries based on the relative status of local marine mammal populations.

Commenters pointed out that NMFS placed the Alaska salmon troll fishery in Category II because of the occasional use of firearms to deter marine mammals, primarily Steller sea lions, from catch and gear. The emergency rule listing the Steller sea lion as threatened, contains several protective regulations (50 CFR 227.12(a)), including a ban on shooting at or near Steller sea lions. In view of this ban, it is unreasonable to assume that there is more than a remote likelihood of entanglement, serious injury, or death of marine mammals from incidental or directed takes by the Alaska salmon troll fishery. (The final rule is now in effect and it also contains the prohibition of shooting at or near Steller sea lions.)

NMFS agrees that the prohibition of shooting at or near Steller sea lions will greatly reduce the likelihood of directed takes of marine mammals in this fishery. As described above, the rate of incidental take by entanglement in troll gear never has been a matter of concern. Accordingly, NMFS moves the Alaska salmon troll fishery to Category III.

Prince William Sound Set Gillnet Fishery for Salmon

Commenters stated that interactions between the Prince William Sound set gillnet fishery and marine mammals are infrequent and rarely result in injury or death of marine mammals. This fishery would be more appropriately placed in Category II.

NMFS is aware that the Prince William Sound set gillnet fishery includes very few permit holders, operates within a very restricted geographical region, and has no history of marine mammal interaction problems. Knowledgeable individuals, including state resource managers who are most familiar with the area, agree that marine mammal interactions with this set gillnet fishery are unlikely. The alternative observer program, mandated under the 1988 Amendments to the MMPA, recorded no takes in 68 observer days in the Prince William Sound set gillnet fishery in 1990. Preliminary assessment by observers suggests that the overall incidence of marine mammal interactions of any sort is very low. Combined, these factors corroborate previous information supporting recategorization of the Prince William Sound set gillnet fishery to Category II.

Copper River/Prince William Sound Drift Gillnet for Salmon

Commenters stated that the drift gillnet fisheries for salmon within Prince William Sound (Coghill, Unakwik, and Eshamy districts) more appropriately belong in Category II than in Category I, based on the categorization criteria described by NMFS. One commenter stated that according to these criteria, the Bering and Copper River Districts belong in Category II, as well.

The observer program in Prince William Sound did not start early enough to cover the entire 1990 fishing season. In particular, the early season in the Copper River District received poor coverage. NMFS believes that it is inappropriate to recategorize the Bering and Copper River Districts without a complete season's observer data.

Although the observer program was in place before the three districts in the Sound opened, data analysis is not complete. The drift gillnet fisheries in these districts are mobile, occur over a larger geographical area, and include many more participants than the set gillnet fishery. These factors make assessment of preliminary observer information difficult. NMFS believes that recategorization of the Prince William Sound drift gillnet fisheries would be premature at this time.

Cook Inlet Drift and Set Gillnet Fisheries for Salmon

One commenter stated that Cook Inlet drift and set gillnet fisheries are very different fisheries and should be separated.

Although this comment referred specifically to Cook Inlet gillnet fisheries, NMFS agrees that is applies to all set and drift gillnet fisheries in Alaska. Set and drift gillnet fisheries will be listed separately for Cook Inlet and Bristol Bay. Set and drift gillnet fisheries already were listed separately for Prince William Sound and the Alaska Peninsula.

One commenter stated that the Cook Inlet drift gillnet fishery for salmon should be moved to Category III because it primarily occurs away from shore and has a much lower likelihood of interaction with marine mammals than the shore-based set gillnet fishery. Another commenter stated that the Cook Inlet set gillnet fishery has very infrequent interactions with marine mammals and should be in Category III. Another commenter stated that marine mammal interactions occur only in the set gillnet fishery in Lower Cook Inlet; gillnet fisheries in the Central and Northern Districts should be moved to Category III.

In view of conflicting comments and without any new supporting evidence, NMFS will not reclassify the Cook Inlet set or drift gillnet fisheries. As noted above, NMFS will separate the set and drift gillnet fisheries in Cook Inlet for the purposes of data collection.

Other Salmon Gillnet Fisheries

One commenter stated that interactions take place between marine mammals, especially Steller sea lions, and those salmon gillnet fisheries in Alaska that were placed in Category III. In its categorization of these fisheries, NMFS claimed that such takes are subsistence takes. The commenter does not believe that this is a correct

interpretation of the differences between exemptions for subsistence and for commercial fisheries.

NMFS placed the Kuskokwim, Yukon, Norton Sound, and Kotzebue salmon gillnet fisheries in Category III because the participants are almost entirely Alaska Natives and potential takes of pinnipeds through interaction are preempted by subsistence takes. State resource managers agree with this assessment. NMFS believes this is a proper and appropriate interpretation of the subsistence exemption.

NMFS is unaware of a significant take of Steller sea lions in these fisheries. Subsistence takes by fishermen in these regions are more likely to be harbor, spotted, ringed, or bearded seals.

Alaska Salmon Purse Seine Fisheries

One commenter stated that all Alaska salmon seine fisheries occurring in the presence of Steller sea lions should be placed in Category I.

NMFS does not agree. The 1988 Amendments to the MMPA instructed NMFS to categorize fisheries depending on whether they have frequent, occasional, or a remote likelihood or no known taking of marine mammals. NMFS was not granted the authority to place a fishery in Category I based on its operation in the presence of a particular marine mammal species.

One commenter cited unconfirmed reports of illegal shootings of Steller sea lions in some Alaska purse seine fisheries as justification for placing them in Category II. Other commenters agreed with the placement of Alaska salmon purse seine fisheries in Category III.

As described in the Proposed List of Fisheries and the Final List of Fisheries, NMFS believes that the likelihood of marine mammal takings by Alaska salmon purse seine fisheries is low. Since that time, NMFS published the final rule listing the Steller sea lion as threatened under the ESA. This action prohibits anyone from shooting at or near Steller sea lions, thus further reducing the likelihood of directed takes of this species. The placement of Alaska salmon purse seine fisheries in Category II based on unsubstantiated illegal takes of Steller sea lions would be inappropriate.

One commenter questioned whether the salmon purse seine fisheries in Unimak and False passes should be retained in Category II or included in Category III with the other salmon purse seine fisheries.

NMFS has no new information relevant to the salmon purse seine fisheries in the Unimak Pass and False Pass area since they were placed in Category II.

Washington Set Gillnet

One commenter recommended that Alaska sea otter be added to the list of species incidentally taken in the "Washington marine set gillnet, in Areas 4, 4A, and 4B" fishery. This recommendation was based on information that one otter had been taken in the fishery in 1989.

NMFS agrees and will add Alaska sea otter (species number 13) to the list of incidentally taken species. In addition, the minke whale (species number 32) is added to the list of species incidentally taken in this fishery, based on a report of a minke whale being taken in 1988.

Summary of Changes to the List of Fisheries

Table 1—Category I Commercial Fisheries in the Pacific Ocean

Alaska Prince William Sound set gillnet for salmonids is moved to Category II (Table 2).

Alaska Peninsula drift gillnet for salmonids is moved to Category II (Table 2) and redefined as: (1) Alaska South Unimak (False Pass and Unimak Pass) drift gillnet for salmonids and (2) Alaska Peninsula (other than South Unimak) drift gillnet for salmonids.

Alaska Bering Sea/Gulf of Alaska trawl for groundfish is separated into: (a) Alaska Bering Sea and Aleutian Islands groundfish trawl and (b) Alaska Gulf of Alaska groundfish trawl.

Table 2—Category II Commercial Fisheries in the Pacific Ocean

Add Prince William Sound set gillnet fishery for salmon (from Category I).

The Alaska Peninsula drift gillnet fishery was redefined as the Alaska South Unimak drift gillnet fishery (from Category I).

Add Alaska Peninsula (other than South Unimak) drift gillnet (from Category I).

Separate the Alaska Cook Inlet drift gillnet and set gillnet fisheries for salmon (both remain in Category II).

Separate the Alaska Bristol Bay drift gillnet and set gillnet fisheries for salmon (both remain in category II).

Clarification of the Washington Puget Sound Region, including Hood Canal, Strait of Juan de Fuca (estuaries and lower river areas subject to tidal action)—Set and Drift Gillnet.

Alaska salmon troll fishery is moved to Category III (Table 3).

The Alaska Southern Bering Sea longline sablefish fishery is redefined as the Alaska Southern Bering Sea, Aleutian Islands, and Gulf of Alaska (Unimak Pass and westward) longline/set line sablefish fishery (NMFS Statistical areas 515, 517, 540, and 61).

Table 3—Category III Commercial Fisheries in the Pacific Ocean

Recategorize Alaska troll fisheries for salmon (from Category II).

Add Alaska groundfish trawl fisheries in state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, and Southeastern Alaska.

Table 4—Category I Commercial Fisheries in the Atlantic Ocean, Caribbean, and Gulf of Mexico

Add Atlantic Ocean, Caribbean, and Gulf of Mexico gillnet fishery for swordfish, tuna, and shark.

Table 5—Category II Commercial Fisheries in the Atlantic Ocean, Caribbean, and Gulf of Mexico

Recategorize the Florida East Coast shark gillnet fishery (from Category III).

Add the Southern New England and Mid-Atlantic trawl fishery for squid by combining the inshore squid trawl fishery (from Category III, Table 6) and the Category II offshore squid trawl fishery.

Clarification of the Atlantic Ocean, Caribbean, Gulf of Mexico longline fishery for swordfish, tuna, and shark.

Table 6—Category III Commercial Fisheries in the Atlantic Ocean, Caribbean, and Gulf of Mexico

The inshore squid fishery is combined with the Southern New England and Mid-Atlantic offshore squid fishery to form the Southern New England and Mid-Atlantic Shore squid fishery (Category II, Table 5).

The Florida East Coast shark gillnet fishery is moved to Category II (Table 5).

The estimated number of vessels/persons has been updated with available information in the following Tables.

List of Fisheries Interim Exemption for Commercial Fisheries

TABLE 1.—CATEGORY I COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery	Estimated number of vessels/ persons	Marine mammal species involved
Gillnet fisheries, salmonids:		
AK Prince William Sound—drift gillnet	536	2, 6, 13, 14, 15.
WA marine set gillnet in Areas 4, 4A, and 4B	19	6, 13, 15, 30, 32.
WA, OR, Lower Columbia River Region, Willapa Bay, Grays Harbor (includes rivers, estuaries, etc.) drift gillnet	850	2, 3, 6, 30.
Gillnet fisheries, other finfish:		
WA, OR, CA thresher shark and swordfish drift gillnet	224	2, 3, 6, 11, 14, 15, 16, 17, 18, 22, 23, 29, 30, 32, 33.
CA California halibut—set gillnet	273	3, 6, 14, 15, 16, 30.
CA angel shark—set gillnet	178	3, 6, 15, 16, 30.
Trawl fisheries, groundfish:		
AK Bering Sea and Aleutian Islands	490	1, 2, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 25, 32.
AK Gulf of Alaska	490	1, 2, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 25, 32.

TABLE 2.—CATEGORY II COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery	Estimated number of vessels persons	Marine mammal species involved
Gillnet fisheries, salmonids:		
AK Prince William Sound—set gillnet	30	2, 6, 13, 15.
AK South Unimak (False Pass and Unimak Pass)	158	2, 6, 13, 14, 15, 30.
AK Peninsula (other than South Unimak)	158	2, 6, 13, 15, 30.
AK Southeast Alaska—drift gillnet	468	2, 6, 13, 14, 15, 25, 30, 31.
AK Yakutat—set gillnet	164	2, 6, 13, 14, 30.
AK Cook Inlet—drift gillnet	560	2, 6, 13, 15, 26.
AK Cook Inlet—set gillnet	743	2, 6, 13, 15, 26.
AK Kodiak—set gillnet	187	2, 6, 13, 15.
AK Peninsula—set gillnet	113	2, 6, 13, 30.
AK Bristol Bay—draft gillnet	1,746	2, 6, 26, 30.
AK Bristol Bay—set gillnet	943	2, 6, 26, 30.
WA Puget Sound Region, Including Hood Canal, Strait of Juan de Fuca (estuaries and lower river areas subject to tidal action) set and drift gillnet.	3,900	1, 2, 3, 6, 14, 15, 25.
WA coastal river—gillnet	325	2, 3, 6.
CA Klamath River—gillnet	504	3, 6.
Other gillnet fisheries:		
AK—gillnets (except salmon and herring)	235	2, 6.
CA—gillnets for white sea bass, yellow tail, soupfin shark, white croaker, bonito/flying fish	275	3, 6, 41, 15, 27, 30.
Purse seine fisheries, salmon:		
AK South Unimak (False Pass and Unimak Pass)	115	1, 2, 13.
Troll fisheries:		
WA, OR, CA salmon	4,727	2, 3, 6.
Round haul (seine and lampara), beach seine, and throw net fisheries:		
CA herring—purse seine	100	3, 6.
CA anchovy, mackerel, tuna—purse seine	160	3, 27
CA sardine—purse seine	120	3, 27
CA squid—purse seine	145	3, 22, 23, 27
Long line/set line fisheries, sablefish:		
AK Prince William Sound	270	25,28.
AK Southern Bering Sea, Aleutian Islands, and Gulf of Alaska Unimak Pass and westward)	226	25.
Pot, ring net, and trap fisheries:		
AK Metlakatla fish trap	4	2, 6.
Dip net fisheries:		
CA squid	115	3,23
Aquaculture, ranch pens:		
WA, OR salmon—net pens	21	2, 3, 6.
OR salmon—ranch	8	3, 6.

TABLE 3.—CATEGORY III COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery	Estimated number of vessels/ persons	Marine mammal species involved
GILLNET fisheries:		
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnets	2,023	15.
AK herring only	174	2,6.
WA, OR Upper Columbia River Basin (above Bonneville Dam) salmon and other finish gillnets	100	3.
WA, OR, CA gillnets for herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish	1,218	3,6.
HI gillnet	81	12,27.
TROLL fisheries:		
AK salmon	2,873	1,2,6,28,31.
Non-Salmon troll fisheries, AK North Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut	1,354	4,6.
HI trolling, rod and reel	903	20,21,24.
Guam tuna	<50	None documented.
Commonwealth of the Northern Mariana Islands tuna	<50	None documented.
American Samoa tuna	<50	None documented.
PURSE seine, beach seine, round haul (seine and lampara) and throw net fisheries:		
AK salmon/herring—beach or purse seine	1,749	2,13,15.
AK other finfish	9	None documented.
WA salmon—purse seine	440	6,14.
WA salmon—reef net	53	6.
WA, OR herring, smelt, squid—purse seine	100	3,6.
WA—beach seine all species	199	None documented.
HI—purse seine	18	None documented.
HI opelu/akule—net	3	None documented.
HI—throw net, cast net	24	None documented.
HI—net unclassified	8	None documented.
Western Pacific yellowfin tuna—purse seine (South Pacific Tuna Treaty)	32	None documented.
Long line/set line fisheries:		
AK groundfish (except sablefish in BSAI/GOA which are in Category II)	1296	3,31.
AK, WA, OR North Pacific halibut	5,893	2,4,25,28.
WA, OR, CA groundfish, bottomfish	367	3,4,6,17.
CA shark/bonito	10	3.
HI tuna, billfish, mahi mahi, wahoo, oceanic sharks	200	21,24.
TRAWL fisheries:		
AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeastern Alaska groundfish	8	14
AK food/bait herring	2	None documented.
AK, WA, OR, CA shrimp	382	None documented.
WA, OR, CA groundfish, squid, smelt, bottomfish	585	1,2,3,6,14,17,27,33.
CA California halibut	25	3.
CA sea cucumber	6	None documented.
POT, ring net, and trap fisheries:		
AK shellfish—pot	1,533	13.
AK finfish—pot	226	None documented.
WA, OR, CA sablefish—pot	176	4,6.
WA, OR, CA dungeness crab	1,426	4,6,30,32.
WA, OR shrimp—pot	231	None documented.
CA lobster, prawns, shrimp, rock crab, fish—pot	608	None documented.
OR, CA hagfish	7	None documented.
HI lobster—trap	21	12.
HI crab—trap	5	None documented.
HI fish—trap	2	None documented.
HI shrimp—trap	2	None documented.
HI other—trap	6	None documented.
HANDLINE and jib fisheries:		
AK North Pacific halibut	69	None documented.
AK other finfish	33	None documented.

TABLE 3.—CATEGORY III COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery	Estimated number of vessels/ persons	Marine mammal species involved
WA groundfish, bottomfish	679	4,6.
HI aku boat, pole and line	17	None documented.
HI inshore handline	76	20.
HI deep sea bottomfish	434	12,20.
HI tuna	144	12,20,21.
Guam bottomfish	<50	None documented.
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented.
American Somoa bottomfish	<50	None documented.
DIP net fisheries:		
WA, OR smelt, herring	119	None documented
HARPOON fishery:		
CA swordfish	228	None documented.
POUND fisheries:		
AK, Prince William Sound herring spawn on kelp	81	2.
AK Southeast Alaska herring food/bait	1	None documented.
WA herring—brush weir	1	None documented.
WA herring spawn or kelp	4	None documented.
BAIT pens:		
WA, OR herring	12	6.
DREDGE fishery:		
Coastwide scallop	106	None documented.
DIVE, hand/mechanical collection fisheries:		
AK abalone	23	None documented.
AK dungeness crab	3	None documented.
AK herring spawn on kelp	172	None documented.
AK urchin and other fish/shellfish	19	None documented.
AK clam hand shovel	64	None documented.
AK clam mechanical/hydraulic fisheries	3	None documented.
WA geoduck	37	4.
WA, OR sea urchin, other clams, octopus, oysters, sea cucumbers, scallops	647	2,6.
CA abalone	129	None documented.
CA sea urchin	800	None documented.
HI squiding, spear	49	None documented.
HI lobster diving	16	None documented.
HI coral diving	2	None documented.
HI handpick	86	None documented.
AQUACULTURE, ranch, ponds:		
WA tribal salmon ranch	1	None documented.
WA oyster farm	316	None documented.
WA mussel/clam	224	None documented.
WA, CA kelp	4	None documented.
HI fish pond	3	None documented.
COMMERCIAL passenger fishing vessel (charter boat) fisheries:		
AK, WA, OR, CA all species	1243	3,6.
OTHER fisheries:		
HI	17	None documented.

TABLE 4.—Category I Commercial Fisheries in the Atlantic Ocean, Caribbean, and Gulf of Mexico

Fishery	Estimated number of vessels/ persons	Marine mammal species involved
TRAWL fishery:		
SNE, MDA Foreign mackerel	19	16,20,22,23,34.
GILLNET fisheries:		
Atlantic Ocean, CB, GMX swordfish, tuna, shark	75	16,19,20,22,23,29
GME groundfish/mackerel	345	6,15,23,31,32,34,35,38.

TABLE 5.—Category II Commercial Fisheries in the Atlantic Ocean, Caribbean, and Gulf of Mexico

Fishery	Estimated number of vessels/ persons	Marine mammal species involved
GILLNET fishery:		
FL east coast shark	24	20.
TRAWL fisheries:		
SNE, MDA squid	370	16,22,23,34.
SNE, MDA Atlantic mackerel	340	16.
LONGLINE:		
Atlantic Ocean, CB, GMX tuna, shark swordfish	820	16,22,23,24,27,31,32,36.

TABLE 6.—CATEOGRY III COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, CARIBBEAN, AND GULF OF MEXICO

Fishery	Estimated number of vessels/ persons	Marine mammal species involved
Trawl fisheries:		
GME northern shrimp	320	None documented.
GME mackerel	30	None documented.
GEM, SNE groundfish	1,052	None documented.
GME, SNE sea scallops	215	None documented.
GME, SOA, GMX coastal herrings	5	36.
SNE, MDA mixed species	>1,000	None documented.
SOA, GMX shrimp	18,292	20,40.
GMX butterfish	5	36.
GA, SC whelk	25	None documented.
Calico scallops	200	None documented.
Bluefish, croaker, flounder	550	None documented.
Crab	400	None documented.
Purse seine:		
GME Atlantic herring	30	6,15,35.
GME, SNE, MDA menhaden	10	20.
GME, SNE, MDA Atlantic bluefish tuna	5	31.
SOA, GMX menhaden	97	20.
FL west coast sardines	16	20.
Bottom longline/hook & line:		
GME tub trawl groundfish	46	6,35.
SOA, GMX snapper-grouper and other reef fish	1,300	None documented.
Pelagic hook & line/harpoon/gillnet:		
GME, SNE, MDA tuna, shark, swordfish	26,223	None documented.
SOA, GMX	1,445	None documented.
Gillnet:		
GME, SNE, MDA, SOA coastal shad, sturgeon	4,515	15,20,32.
SOA, GMX coastal	4,000	20.
FL east coast, GMX pelagics king & spanish mackerel	271	20.
Fixed gear fisheries trap/pot—fish:		
GME, SNE, MDA mixed species	100	6,15,31,32,35.
MDA black sea bass	30	None documented.

TABLE 6.—CATEOGRY III COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, CARIBBEAN, AND GULF OF MEXICO—Continued

Fishery	Estimated number of vessels/ persons	Marine mammal species involved
MDA eel	500	None documented.
Fixed gear fisheries trap/pot—lobster, crab:		
GME, SNE inshore lobster	10,613	6,31,32,38,39.
GME, SNE offshore lobster	2,902	None documented.
Atlantic Ocean, GMX blue crab	20,500	20,40.
SOA, GMX, CB spiny lobster	2,500	20,40.
SOA, GMX, CB reef fish	2,200	None documented.
FL east & west coast, GMX stone crab	500	20,40.
Stop seine, weirs (staked fish traps):		
GME herring and Atlantic mackerel	50	6,15,31,32,35,38.
SNE, MDA mixed species	500	None documented.
MDA crab	2600	None documented.
Dredge fisheries:		
GME, SNE sea scallops	233	31.
SNE, MDA offshore clam	159	None documented.
GME mussel	>50	None documented.
MDA oyster	7000	None documented.
Haul seine:		
SOA, CB	150	None documented.
Beach seine:		
CB	15	40.
Aquaculture, pens:		
GME Atlantic salmon	30	6,35.
Dive, hand/mechanical collection fisheries:		
GME urchins	<50	None documented.
Atlantic Ocean, GMX, CB shellfish	20,000	None documented.

List of State Abbreviations Used in Tables:
AK—Alaska.
CA—California.
FL—Florida.
GA—Georgia.
HI—Hawaii.
OR—Oregon.
SC—South Carolina.
TX—Texas.
WA—Washington.
Acronyms and the Areas They Represent:
BASI—Bering Sea and Aleutian Islands.
CB—Caribbean.
GME—Gulf of Main—Canadian Border to Nantucket Island, Massachusetts (includes Georges Bank).
GMX—Gulf of Mexico—All Gulf States.
GOA—Gulf of Alaska.
MDA—Mid Atlantic—New Jersey to Cape Hatteras, North Carolina.
SNE—Southern Atlantic—South Carolina to Florida.
Explanation of Columns:
Fishery—Identified by gear, target species, and area.
Estimated # of Vessels/Persons—Contains the best and most recent available information on the number of vessels/persons licensed to participate in a fishery or, in the case of Alaska, the number of permits.
Marine Mammal Species Involved—Contains a list of all documented or reported instances (including rare and unique instances) of marine mammal interactions. The inclusion of a species does not address the magnitude of take and makes no statement regarding the significance of any interaction.

SPECIES CODES FOR MARINE MAMMAL TAKEN IN COMMERICAL FISHERIES

Species codes	Common name	Scientific name
1	Northern fur seal.	Callorhinus ursinus.
2	Steller (northern) sea lion.	Eumetopias jubatus.
3	California sea lion.	Zalophus californianus.
4	Unidentified sea lion.	

SPECIES CODES FOR MARINE MAMMAL TAKEN IN COMMERICAL FISHERIES—Continued

Species codes	Common name	Scientific name
5	Walrus	Odobenus rosmarus.
6	Harbor seal	Phoca vitulina.
7	Spotted seal	Phoca large.
8	Ringed seal	Phoca hispida.
9	Ribbon seal	Phoca fasciata.
10	Bearded seal	Erignathus barbatus.

SPECIES CODES FOR MARINE MAMMAL TAKEN IN COMMERICAL FISHERIES—Continued

Species codes	Common name	Scientific name
11	Northern elephant seal.	Mirounga angustirostris
12	Hawaiian monk seal.	Monachus schauinslandi.
13	Alaska sea otter	Enhydra lutris lutris.
14	Dall's porpoise	Phocoenoides dalli.

SPECIES CODES FOR MARINE MAMMAL TAKEN IN COMMERICAL FISHERIES—Continued

Species codes	Common name	Scientific name
15	Harbor porpoise	Phocoena phocoena.
16	Common (saddleback) dolphin	Delphinus delphis.
17	Pacific whitesided dolphin	Lagenorhynchus obliquidens.
18	Northern right whale dolphin	Lissodelphis borealis.
19	Striped dolphin	stenella coeruleoalba.
20	Bottlenose dolphin	Tursiops truncatus.
21	Rough toothed dolphin	Steno bredanensis.
22	Risso's dolphin	Grampus griseus.
23	Pilot whale	Globicephala melaena.
24	False killer whale	Pseudorca crassidens.
25	Killer whale	Orcinus orca.

SPECIES CODES FOR MARINE MAMMAL TAKEN IN COMMERICAL FISHERIES—Continued

Species codes	Common name	Scientific name
26	Beluga whale	Delphinapterus leucas.
27	Unidentified small cetacean.	
28	Sperm whale	Physeter catodon.
29	Beaked whales	Ziphiidae.
30	Gray whale	Eschrichtius robustus.
31	Humpback whale.	Megaptera novaeangliae.
32	Minke whale	balaenoptera acutorostrata.
33	Unidentified large cetacean.	
34	Atlantic whitesided dolphin.	Lagenorhynchus acutus.
35	Gray seal	Halichoerus grypus.
36	Spotted dolphin	stenella spp.

SPECIES CODES FOR MARINE MAMMAL TAKEN IN COMMERICAL FISHERIES—Continued

Species codes	Common name	Scientific name
37	Pygmy sperm whale.	Kogia breviceps.
38	Northern right whale.	Eubalaena glacialis.
39	Fin whale	balaenoptera physalus.
40	Manatee	Trichechus manatus.
41	Southern (California) sea otter.	Enhydra lutris neries.

Dated: February 1, 1991.

Michael F. Tillman,

Deputy Assistant Administrator 52 for Fisheries.

[FR Doc. 91-2920 Filed 2-6-91; 8:45 am]

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Thursday, February 7, 1991

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102d Congress, 1st Session, 1991

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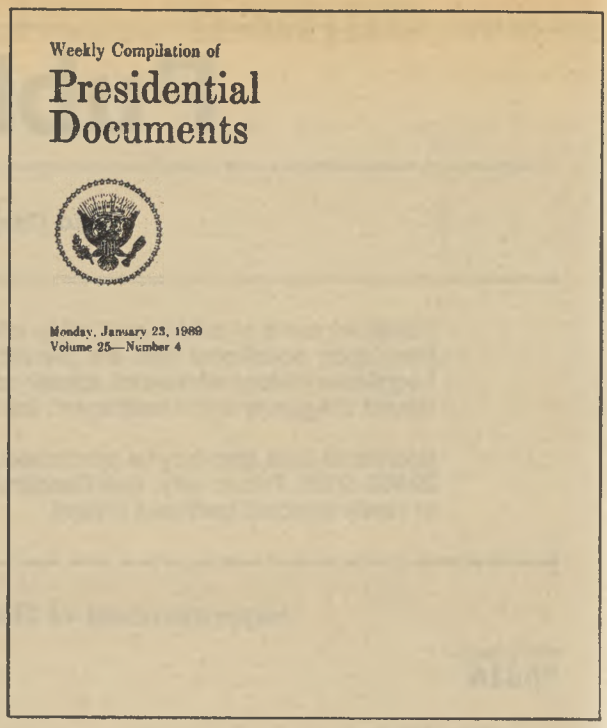

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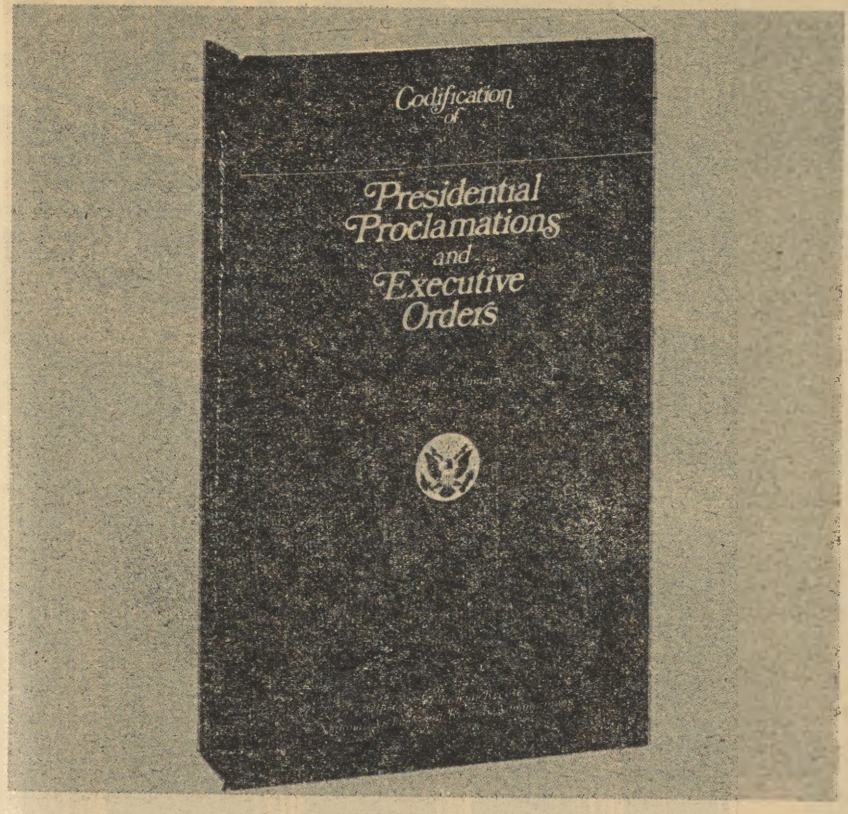

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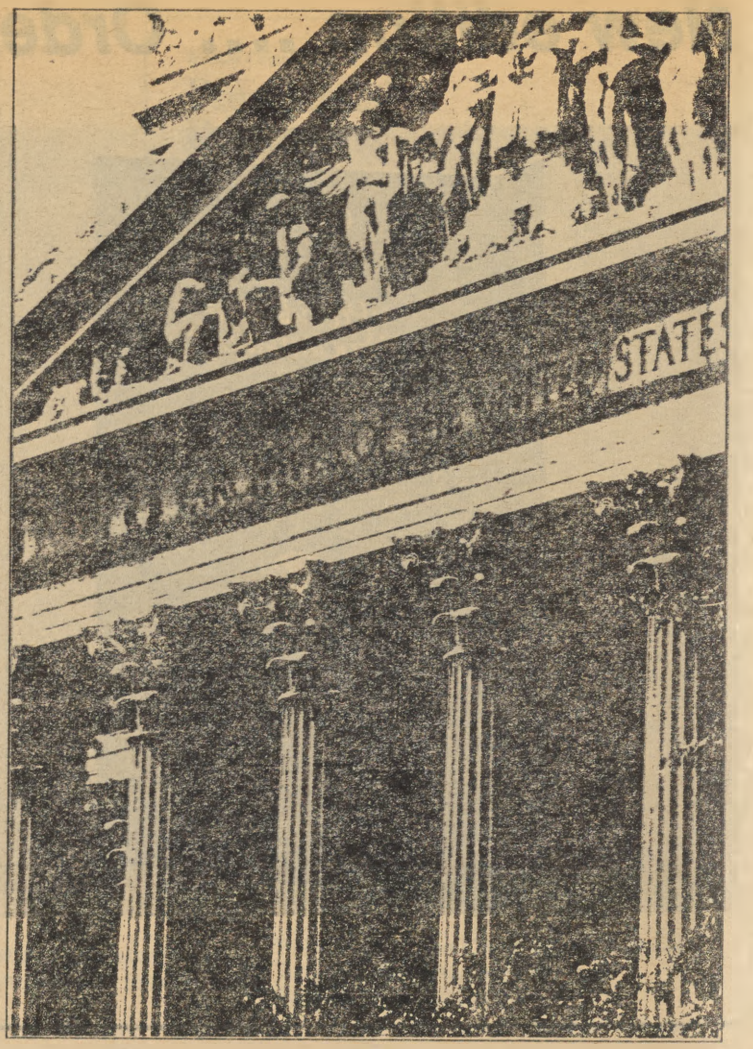

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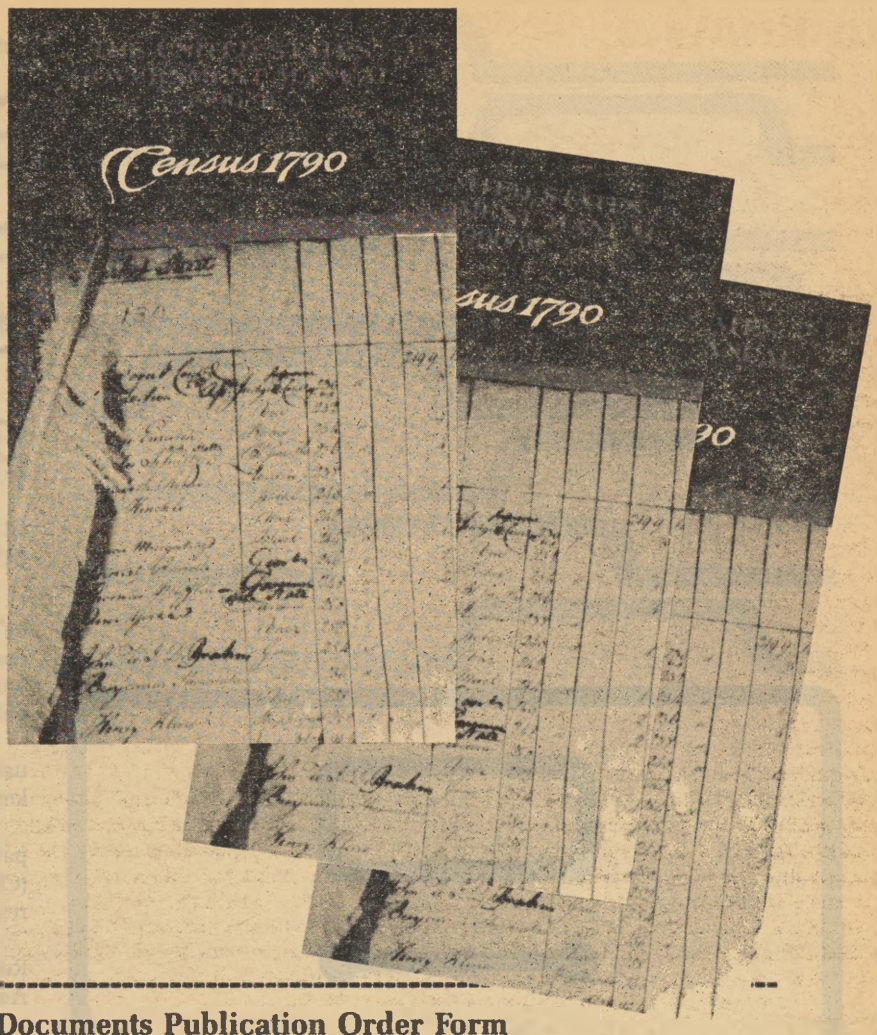

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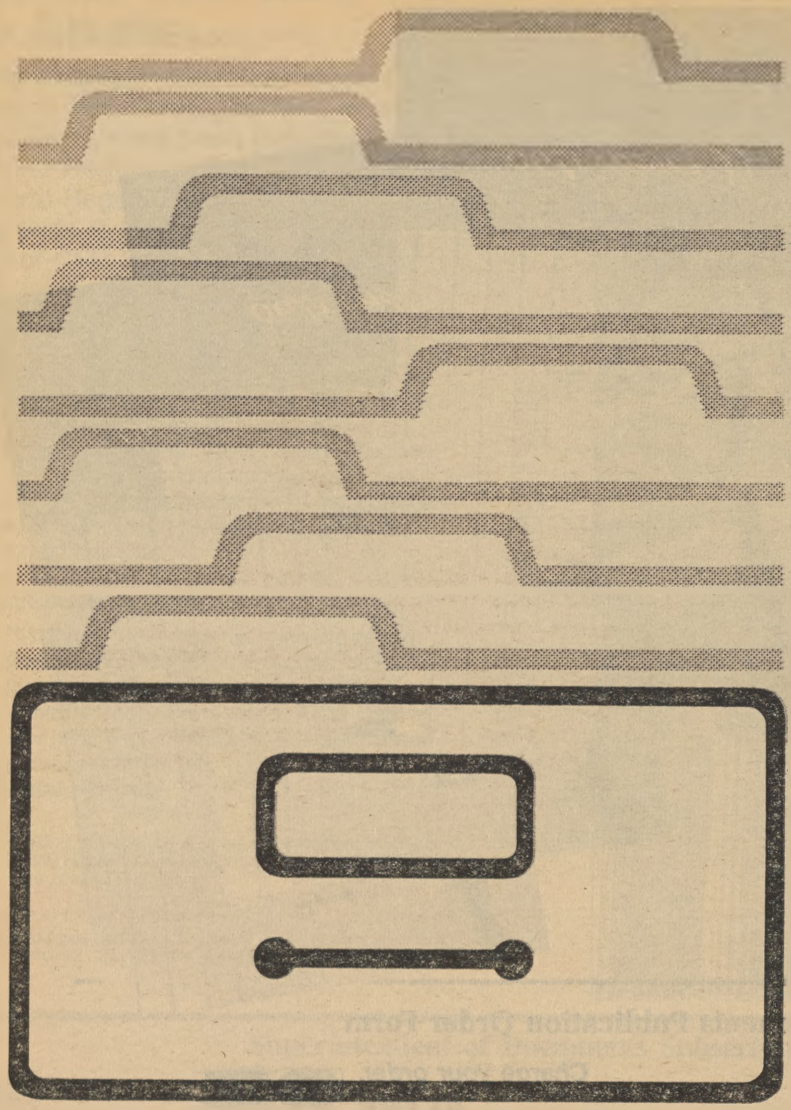

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in the Code of Federal Regulations (CFR)

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