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Rules and Regulations

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

RIN 3206–AE25

Expanded Authority to Make Appointments Above Minimum Rates

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations revising and expanding the authority for agencies to appoint superior candidates above the minimum rate of their General Schedule grade. These final regulations reflect changes resulting from both the Federal Employees Pay Comparability Act of 1990 (FEPCA), which permits appointments at advanced rates to be made at any grade, and the District of Columbia Home Rule Act, which led to establishment of a separate pay system for DC Government employees.

EFFECTIVE DATE: November 21, 1991.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 606–0960 or FTS 266–0960.

SUPPLEMENTARY INFORMATION:

Removal of previous GS–11 grade limit

Under 5 U.S.C. 5333, agencies may set pay for new appointees to General Schedule (GS or GM) positions above step 1 of the grade based on the appointees' superior qualifications, existing pay, or a special need of the agency. The Federal Employees Pay Comparability Act of 1990 (FEPCA), enacted November 5, 1990, permits appointments of superior candidates above the minimum rate at any General Schedule grade (removing the previous limit of GS–11 and above). Interim regulations implementing this change were published February 14, 1991 (56 FR 6204). Those regulations also asked for comments on other policy changes that might be appropriate, particularly removal of the requirement that OPM approve all rates that exceed a candidate's existing pay by more than 20 percent.

Six Federal agencies and one employee organization responded. Of those commenting on the proposal to remove the pay limit on agencies' delegated authority, three supported removing the restriction for all cases, one supported removing it for special need cases, and one recommended leaving it in place. Most of the agencies recommending removal of the 20 percent limit commented that they expected to approve rates above that limit only in rare instances. Those comments reinforce OPM's experience under the current regulations. Very few agencies have requested approval of rates exceeding the limit, and personnel management evaluations have shown that most pay rates approved by agencies are below the maximum allowed by the regulation.

We find, therefore, that requiring OPM approval for rates more than 20 percent higher than a candidate's existing pay is not necessary to ensure prudent use of this authority. We have also noted that the need to comply with the 20 percent limit may lead agencies to give undue weight to existing pay in justifying and documenting advanced rates. In fact, the candidate's qualifications in relation to other candidates and specialized job requirements, or to a special need of the agency, carry equal weight under the law. The final regulations remove the 20 percent limit but require agencies to document both the candidate's superior qualifications or agency special need that justified use of the authority in 5 U.S.C. 5333 and the basis for approving a rate that exceeds the candidate's existing pay.

One agency suggested that approval of advanced rates under 5 U.S.C. 5333 be permitted based solely on the candidate's existing pay. We have not adopted this suggestion, which would exceed the intent of the law. The legislative history indicates that the authority was intended to match existing pay only when necessary to recruit specific candidates who possess unusually high or unique qualifications. When an agency finds that there is a general shortage of well-qualified candidates for particular positions and that its ability to recruit such candidates is severely hampered because Federal pay scales are not competitive, or for other reasons, it should consider seeking OPM approval for special pay rates, as provided in 5 U.S.C. 5305.

Other comments and suggestions

One agency suggested that an exception to the 90-day break in service requirement be made for cooperative education students who become eligible for conversion to competitive appointment. This change is fully consistent with the intent of both FEPCA and the superior qualifications authority, and we have adopted it. Agencies appoint co-op students with the intent of converting those who successfully complete their work-study program to permanent appointments upon graduation. They cannot use the superior qualifications authority at that point, however, because most students have not yet acquired minimum (much less superior) qualifications for the target positions, nor are they usually forfeiting income that would justify an advanced pay rate. Upon graduation, a student who has successfully combined formal coursework with practical experience in the agency may well be a superior candidate for an entry level job. Such a candidate may also attract higher-paying offers from nonfederal employers. If the Federal agency cannot compete with those offers, it may lose both the employee and its training investment. Permitting co-op students to receive superior qualifications appointments immediately following their excepted employment would carry out the statutory intent to facilitate recruitment of high-quality personnel.

The same agency suggested that an exception to the 90-day break in service requirement be made for any temporary appointment that is made pending completion of the competitive examining process. We have not adopted this suggestion. Unlike co-op students, temporary appointees awaiting certification are appointed to the same positions they would fill under permanent appointments. They could, therefore, be appointed at an advanced rate initially, and that rate could be used to set their pay upon conversion under the highest previous rate provisions of 5

CFR 531.203(c). The fact that a candidate accepts employment at step 1 with no assurance that the salary will be increased (and, in the case of a candidate pending certification, no assurance that the appointment can be made permanent) indicates that a higher rate was not needed as a recruiting incentive.

Under 5 CFR 531.203(c), an employee's highest previous rate may have been earned under any appointment that was not limited to 90 days or less. The only commonly-used temporary appointing authority that would be limited to 90 days or less is the special need authority. A special need appointment may be appropriate when it is essential that the candidate begin urgent work before the examining process can be completed. That situation occurs rarely. The special need authority is not to be used routinely to bring selected candidates on board before they are reached on an appropriate register. Situations requiring use of an initial temporary appointment can be met using other appointing authorities. A regulatory change to accommodate initial special need appointments would, therefore, produce no real benefit and would be inconsistent with the intent of the special need authority.

The employee organization recommended removing the requirement that agencies consider use of a recruitment bonus as an alternative to an advanced pay rate. We agree that a bonus alone is not likely to attract a candidate whose current salary is higher than the step 1 rate. However, when an additional recruiting incentive is needed, use of a bonus may be an alternative to setting pay at a step higher than that needed to match the candidate's salary. The final regulations retain the requirement that agencies document the factors considered in approving an advanced rate, including the possibility of using a recruitment bonus. The regulations also require agencies to establish guidelines for use of the superior qualifications appointment authority. Such guidelines, combined with those required by the regulations governing use of recruitment bonuses, should clarify the relationship between the two authorities.

Recordkeeping requirements

Reviews conducted by OPM and the General Accounting Office have shown that agencies' records do not always contain sufficient information to permit reconstruction of decisions to pay advanced rates. The final regulations clarify the recordkeeping requirement contained in the interim regulations by stating that both pay and qualifications factors must be documented. OPM will provide further guidance on recordkeeping in the Federal Personnel Manual.

Eligibility of District of Columbia Government employees for appointment at advanced rates

Currently, OPM's regulations require that superior qualifications appointments be made by new appointment or by reappointment after a break in service of at least 90 days from the candidate's latest employment in either the Federal or the District of Columbia Government. District employees who entered the DC Government before October 1, 1987, may be appointed in the Federal service at rates matching their DC salaries under 5 U.S.C. 5334 and 5 CFR 531.203(c). However, OPM regulations do not permit the salaries of DC employees who were first hired on or after October 1, 1987, to be used as a basis for setting Federal pay.

Proposed regulations that would permit DC Government employees hired since October 1, 1987, to receive superior qualifications appointments were published on September 14, 1990 (55 FR 37881). Three agencies commented, all supporting the proposal. We are, therefore, adopting those proposed regulations in these final regulations.

With the changes discussed above, we are adopting the interim regulations as final.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined in 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 it affects only Federal employees and agencies.

List of Subjects in 5 CFR Part 531

Government employees, Wages, Administrative practice and procedure.

Office of Personnel Management

Constance Berry Newman,

Director.

PART 531—[AMENDED]

Accordingly, OPM's interim regulations under part 531 published February 14, 1991, at 56 FR 6204, are adopted as final with the following changes:

1. The authority citation for part 531 is revised to read as follows:

Authority: 5 U.S.C. 5115, 5338, and chapter 54; E.O. 12748; subpart A issued under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462, and E.O. 12736; subpart B also issued under 5 U.S.C. 5333, 5402, and 7701(b)(2); subpart D also issued under 5 U.S.C. 7701(b)(2); subpart E also issued under 5 U.S.C. 5336.

2. In § 531.203, paragraph (b) is revised to read as follows:

§ 531.203 General provisions.

* * * * *

(b) *Superior qualifications appointments.* (1) A "superior qualifications appointment" means an appointment made at a rate above the minimum rate of the appropriate General Schedule grade under authority of section 5333 of title 5, United States Code, because of the superior qualifications of the candidate or a special need of the agency for the candidate's services.

(2) An agency may make a superior qualifications appointment by new appointment or by reappointment except that when made by reappointment, the candidate must have a break in service of at least 90 calendar days from his or her last period of Federal employment or employment with the District of Columbia (other than—

(i) Employment with the Government of the District of Columbia when the candidate was first appointed by the DC Government on or after October 1, 1987;

(ii) Employment under an appointment as an expert or consultant under section 3109 of title 5, United States Code;

(iii) Employment under a temporary appointment effected primarily in furtherance of a postdoctoral research program, or effected as part of a predoctoral or postdoctoral training program during which the employee receives a stipend, or employment under a temporary appointment of a graduate student when the work performed by the student is the basis for completing certain academic requirements for an advanced degree;

(iv) Employment in a cooperative work-study program under a Schedule B appointment made in accordance with section 213.3202 of this chapter;

(v) Employment as a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration or the Commissioned Corps of the Public Health Service;

(vi) Employment which is neither full-time employment nor the principal employment of the candidate; or

(vii) Employment under the Intergovernmental Personnel Act).

(3) In determining whether an employee should receive a superior qualifications appointment and, if so, at what level the employee's pay should be set, the agency must consider the possibility of authorizing a recruitment bonus as provided in Part 575 of this chapter.

(4) Each agency that makes superior qualifications appointments must establish documentation and recordkeeping procedures sufficient to allow reconstruction of the action taken in each case. Documentation must include—

(i) The superior qualifications of the individual or special need of the agency that justified use of this authority;

(ii) The factors considered in determining the individual's existing pay and the reason for setting pay at a rate higher than that needed to match existing pay; and

(iii) The reasons for authorizing an advanced rate instead of or in addition to a recruitment bonus.

(5) Each agency using the superior qualifications authority must establish appropriate internal guidelines and evaluation procedures to ensure compliance with the law, these regulations, and agency policies.

[FR Doc. 91-25398 Filed 10-21-91; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 24 and 2400

Amendment of Regulations and Rules of Procedure, Agriculture Board of Contract Appeals

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The Agriculture Board of Contract Appeals (Board) amends the regulations and Rules and Procedure governing appeals before it, 7 CFR part 24, so that they properly reflect the Board's jurisdiction and underlying authority. The amendment also clarifies the role of the hearing examiner, corrects minor typographical errors, and removes 7 CFR part 2400, which has been superseded.

DATES: Effective on October 22, 1991.

FOR FURTHER INFORMATION CONTACT: Marilynn M. Eaton, Vice Chair, Board of Contract Appeals, room 2912, South Building, U.S. Department of Agriculture, Washington, DC 20250.

SUPPLEMENTARY INFORMATION:

Objective

The objective of this rule is to amend the regulations and Rules of Procedure of the Board of Contract Appeals, Department of Agriculture, 7 CFR part 24, to reflect changes in jurisdiction and underlying authority which have occurred since publication in 1982. The regulations, at § 24.4(d), previously provided for appeals of debarment actions by authorized officials of (1) the Commodity Credit Corporation (CCC) under 7 CFR 1407.6(d); (2) the Department of Agriculture under 41 CFR 4-1.604-1(b); and (3) the Farmers Home Administration (FmHA) under 7 CFR chapter XVIII, part 1918, subpart C.

The Agriculture Acquisition Regulation (AGAR), at 48 CFR 409.470, authorizes the Board to hear appeals by procurement contractors from both suspension and debarment actions by Department debarment officials. The regulations of the CCC, at 7 CFR 1407.2, make the provisions of 48 CFR 409.403 *et seq.* applicable to all CCC suspension and debarment proceedings. The amendment of § 24.4(d)(1) reflects the Board's jurisdiction, under the AGAR, over suspensions as well as debarments.

Forest Service regulations, at 36 CFR 223.138(b)(8), authorize the Board to hear appeals by timber purchasers from debarment actions by officials of the Forest Service. The addition of § 24.4(d)(2) reflects this jurisdiction.

Section 3017.515 of the Governmentwide Debarment and Suspension (Nonprocurement) regulations, as adopted by the Department of Agriculture, 54 FR 4729 (1989), 7 CFR part 3017, establishes jurisdiction over nonprocurement debarment and suspension appeals in the Office of Administrative Law Judges. Accordingly, the reference to the Board's review of debarment actions by the FmHA is deleted.

Procurement contractors must appeal suspension and debarment actions by officials of the Department of Agriculture and the CCC within 90 days of their receipt of a decision to this effect. Timber purchasers must appeal debarment actions by the Forest Service within 30 days of receipt of a decision. Accordingly, the amendment of § 24.5 reflects these times.

With regard to the conduct of hearings for appeals considered under the Contract Disputes Act, Rule of Procedure 20 refers to an "examiner." Amended § 24.3 clarifies the role of this individual. Additionally, this amendment corrects minor typographical errors and omissions and removes the Board's telephone number pending change to FTS 2000.

The Board's former regulations, 7 CFR part 2400, were superseded effective September 25, 1974, but continued to be published for application to appeals pending on that date. The Board no longer has any cases pending under 7 CFR part 2400. Accordingly, that section is deleted.

The Board published its proposed amendments in the **Federal Register** on May 31, 1991, 56 FR 24738. No substantive comments were received. They, therefore, are adopted as proposed.

Regulatory Impact

This action reflects jurisdictional changes that already have been adopted, and it is therefore exempt from the requirements of Executive Order 12291. This action is not a rule as defined by the Regulatory Flexibility Act, so it is also exempt from the provisions of that Act. This action relates to delegations of authority and internal management of the Department of Agriculture, and it does not constitute a major federal action affecting the quality of the human environment. Finally, the rule imposes no additional paperwork requirements on individuals or groups who appeal to the Board of Contract Appeals.

List of Subjects in 7 CFR Part 24

Administrative practice and procedure; Agriculture; Government contracts; Organization and functions (Government agencies)

For the reasons set forth in the Preamble, and under the Secretary's authority, 5 U.S.C. 301, part 24, title 7, Code of Federal Regulations is amended as follows:

PART 24—BOARD OF CONTRACT APPEALS, DEPARTMENT OF AGRICULTURE

1. The authority citation for part 24 is revised to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 714b, 714g, and 714h; 16 U.S.C. 551; 40 U.S.C. 486(c); 41 U.S.C. 601-613.

Subpart A—Organization and Functions

2. Section 24.2 is amended by revising the third sentence to read as follows:

§ 24.2 Composition of the Board.

* * * Except as provided in Rule 12.2 the Small Claims (Expedited) Procedure, and rule 12.3 the Accelerated Procedure, of appendix A to § 24.21, and in rule 9 Accelerated Procedure of appendix B to § 24.21, decisions of the Board will be rendered by a panel of three

Administrative Judges, and the decision of the majority of the panel will constitute the decision of the Board.

* * *

* * * * *

3 Section 24.3 is amended by revising the introductory text to read as follows:

§ 24.3 Presiding Administrative Judge.

The Chair acts as Presiding Administrative Judge, or designates a member of the Board or an examiner to so act, in each proceeding. The Presiding Administrative Judge or the examiner has power to:

* * * * *

4. Section 24.4 is amended by revising paragraph (d) to read as follows:

§ 24.4 Jurisdiction.

* * * * *

(d) *Suspension and debarment.* (1) The Board shall have jurisdiction to hear and determine the issue of suspension or debarment and the period thereof, if any, on an appeal by a person suspended or debarred by:

(i) an authorized official of the Department of Agriculture, under 48 CFR 409.470; or

(ii) an authorized official of the Commodity Credit Corporation under 7 CFR part 1407.

(2) In addition, the Board shall have jurisdiction to hear and determine the issue of debarment and the period thereof, if any, on an appeal by a timber purchaser debarred by an authorized official of the Forest Service under 36 CFR part 223.

5. Section 24.5 is revised to read as follows:

§ 24.5 Time for filing notice of appeal.

A notice of appeal under §§ 24.4(a), 24.4(d)(1)(i), or 24.4(d)(ii) shall be filed within 90 days from the date of receipt of a contracting officer's or suspending or debarring official's decision. A notice of appeal under § 24.4(b)(1) shall be filed within 30 days from the date of receipt of the contracting officer's decision or within such different time as may be prescribed in the contract or other applicable regulation of the Department of Agriculture. A notice of appeal under §§ 24.4(b)(2), or 24.4(d)(2) shall be filed within 30 days from the date of receipt of the contracting officer's or debarring official's decision. The time for filing a notice of appeal shall not be extended by the Board.

§ 24.6 [Amended]

6. Section 24.6, Board Location and Address, is amended by removing the last sentence.

7. Section 24.21 is amended by redesignating paragraph (b) as appendix A to § 24.21, by removing the paragraph designation for paragraph (a) and redesignating paragraphs (a) (1) and (2) as paragraphs (a) and (b), and by revising newly designated paragraph (b) to read as follows:

§ 24.21 Rules of Procedure of Agriculture Board of Contract Appeals—AGBCA.

* * * * *

(b) No member of the Board or the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff off the record any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to ex parte communication concerning the Board's administrative functions or procedures.

* * * * *

8. In newly designated appendix A to § 24.21, the heading is revised to read as follows:

Appendix A to § 24.21—Rules of Procedure Applicable to Appeals Under § 24.4(a)

9. Rule 34 of newly designated appendix A to § 24.21 is revised to read as follows:

Rule 34. Applicability of these rules

These Rules of Procedure for § 24.4(a) shall apply (1) mandatorily to all appeals relating to contracts entered into on or after March 1, 1979, and (2) at the Contractor's election, to appeals relating to earlier contracts, with respect to claims pending before the contracting officer on March 1, 1979, or initiated thereafter.

10. The heading and text following rule 34 of newly designated appendix A to § 24.21 is designated as appendix B to § 24.21 and the heading is revised to read as follows:

Appendix B to § 24.21—Rules of Procedure Applicable to Appeals Under §§ 24.4(b), (c) and (d)

11. Rule 22 of newly designated Appendix B to § 24.21 is revised to read as follows:

Rule 22. Withdrawal of exhibits

After a decision has become final the Board may, upon request and after notice to the other party, in its discretion, permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition for granting permission for such withdrawal.

PART 2400—ORGANIZATION, FUNCTIONS AND RULES OF PROCEDURE

Part 2400, title 7, Code of Federal Regulations is removed and chapter XXIV is vacated.

Done at Washington, DC, this 23rd day of September, 1991.

Edward Madigan,

Secretary of Agriculture.

[FR Doc. 91–25415 Filed 10–21–91; 8:45 am]

BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 89–150]

Brucellosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the brucellosis regulations by removing all references to "Deputy Administrator" and replacing them with references to "Administrator." We are also removing references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." These changes are warranted so the regulations will accurately reflect that the Administrator of the agency holds the primary authority and responsibility for various decisions under the regulations.

EFFECTIVE DATE: October 22, 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: Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella.* The brucellosis regulations contained in 9 CFR part 78 (referred to below as the regulations) 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. Prior to the effective date of this document, these regulations indicated that the Deputy Administrator of the Animal and Plant Health Inspection Service (APHIS) for Veterinary Services was the official responsible for various decisions under

these regulations. We are revising 9 CFR part 78 to indicate that the primary authority and responsibility for various decisions under these regulations belongs to the Administrator of the agency. We are making similar revisions in all other APHIS regulations. These revisions will be published in separate **Federal Register** documents.

To clarify the regulations with respect to the Administrator's authority and responsibility, we are making nonsubstantive changes in the regulations. We are removing all references to "Deputy Administrator" and replacing them with references to "Administrator," and are removing references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service (APHIS)." We are also adding definitions of "Administrator," and "APHIS representative" and deleting the definitions of "Deputy Administrator," "Veterinary Services," and "Veterinary Services representative." In addition, we are inserting the definition of "Accredited veterinarian" from 9 CFR 160.1, instead of referring to that section, to make it consistent with other parts contained in 9 CFR.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register.** Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Public Law 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

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

These programs/activities under 9 CFR part 78 are listed in the Catalog of Federal Domestic Assistance under No. 10.025 and are 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, Bison, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

Accordingly, we are amending 9 CFR part 78 as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

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).

§ 78.1 [Amended]

2. In § 78.1, the terms "Deputy Administrator", "Veterinary Services", and "Veterinary Services representative" are removed from the list of terms that follows immediately after the introductory sentence, "The following terms are defined in this section:" and the following terms are added in alphabetical order, "Administrator" and "APHIS representative".

§ 78.1 [Amended]

3. In § 78.1, the definitions of "Deputy Administrator", "Veterinary Services", and "Veterinary Services representative" are removed and the definition of "Accredited veterinarian" is revised to read as follows:

* * * * *

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of part 161 of this title to perform functions specified in parts 1, 2, 3, and 11 of subchapter A, and subchapters B, C, and D of this chapter, and to perform functions required by cooperative State-Federal disease control and eradication programs.

* * * * *

§ 78.1 [Amended]

4. In § 78.1, definitions of "Administrator" and "APHIS representative" are added, in alphabetical order, to read as follows:

* * * * *

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

* * * * *

APHIS representative. An individual employed by APHIS who is authorized to perform the function involved.

* * * * *

§ 78.1 [Amended]

5. In § 78.1, definition of "Epidemiologist", remove the words "Veterinary Services,".

6. In § 78.1, definition of "Veterinarian in Charge", remove the words "Veterinary Services," and add, in their place, the word "the".

7. In § 78.1, remove the words "A Veterinary Services" and add, in their place, the words "An APHIS" in the following places:

(a) Definition of "Official eartag"; and

(b) Definition of "Official vaccination eartag."

§§ 78.33 and 78.40 [Amended]

8. In addition to the amendments set forth above, in 9 CFR part 78, capitalize the word "state" in the following places:

(a) Section 78.33, paragraph (d)(1)(iii), both times the word appears; and paragraph (e)(1)(ii), both times the word appears.

(b) Section 78.40, second sentence, the additional six times the word appears.

§§ 78.1, 78.2, 78.8, 78.9, and 78.44 [Amended]

9. In addition to the amendments set forth above, in 9 CFR part 78, remove the words "Veterinary Services" and add, in their place, the word "APHIS" in the following places:

(a) Section 78.1, definition of "Approved individual herd plan";

(b) Section 78.1, definition of "Approved intermediate handling facility", sixth sentence, paragraph (e);

(c) Section 78.1, definition of "Certificate", paragraph (b)(1);

(d) Section 78.1, definition of "Class A State or area", paragraphs (a)(2) and (b)(2);

(e) Section 78.1, definition of "Class B State or area", paragraphs (a)(2) and (b)(2);

(f) Section 78.1, definition of "Class C State or area", paragraphs (a)(2) and (b)(2);

(g) Section 78.1, definition of "Class Free State or area", paragraphs (a)(2) and (b)(2).

(h) Section 78.1, definition of "Designated epidemiologist";

(i) Section 78.1, definition of "Official test", paragraphs (a)(1)(i), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), and (a)(10);

(j) Section 78.1, definition of "Official vaccinate";

(k) Section 78.1, definition of "Quarantined feedlot", second sentence;

(l) Section 78.1, definition of "Quarantined pasture", fourth sentence;

(m) Section 78.1, definition of " 'S' brand permit", third sentence;

(n) Section 78.1, footnote 3;

(o) Section 78.2, paragraph (b);

(p) Section 78.8, paragraph (c)(2)(i);

(q) Section 78.9, paragraph (d)(1)(vi)(D), first sentence, the second time the term appears;

(r) Section 78.44, paragraph (c), within the text under the heading "Cooperation", both times the term appears, and within the text under the heading "Records"; and

(s) Section 78.44, paragraph (d), within the text under the heading

"Cooperation", both times the term appears, and within the text under the heading "Records".

§§ 78.1, 78.8, 78.9, 78.11, and 78.44 [Amended]

10. In addition to the amendments set forth above, in 9 CFR part 78, remove the words "a Veterinary Services" and add, in their place, the words "an APHIS" in the following places:

(a) Section 78.1, definition of "Certificate";

(b) Section 78.1, definition of "Official adult vaccinate", paragraph (a)(1);

(c) Section 78.1, definition of "Official calfhood vaccinate", paragraph (a)(1);

(d) Section 78.1, definition of "Permit", first sentence;

(e) Section 78.1, footnote 1;

(f) Section 78.1, footnote 2;

(g) Section 78.8, paragraph (a)(2)(iii)(D), both times the term appears;

(h) Section 78.8, paragraph (a)(4)(iii)(D), both times the term appears;

(i) Section 78.9, paragraph (c)(1)(iv)(D), both times the term appears;

(j) Section 78.9, paragraph (c)(1)(vi)(D), both times the term appears;

(k) Section 78.9, paragraph (d)(1)(iv)(D), both times the term appears;

(l) Section 78.9, paragraph (d)(1)(vi)(D);

(m) Section 78.11, paragraph (c)(2), both times the term appears;

§ 78.44 [Amended]

11. In § 78.44, paragraph (c), within the text under the heading "Request Approval" and immediately under the subheading "Approval Granted", remove the term

"Deputy Administrator
Veterinary Services"

and replace it with the term

"Administrator
Animal and Plant Health Inspection Service".

12. In § 78.44, paragraph (d), within the text under the heading "Request Approval" and immediately under the subheading "Approval Granted", remove the term

"Deputy Administrator
Veterinary Services"

and replace it with the term

"Administrator
Animal and Plant Health Inspection Service".

§§ 78.1, 78.13, 78.25, 78.30, 78.34, and 78.44 [Amended]

13. In addition to the amendments set forth above, in 9 CFR part 78, remove the word "Deputy" in the following places:

(a) Section 78.1, definition of "Approved intermediate handling facility", first and last sentences.

(b) Section 78.1, definition of "Class A State or area", introductory text, both times the word appears; and paragraph (b)(1);

(c) Section 78.1, definition of "Class B State or area", introductory text, both times the word appears; and paragraph (b)(1);

(d) Section 78.1, definition of "Class C State or area", introductory text, both time the word appears; and paragraph (b)(1);

(e) Section 78.1, definition of "Class Free State or area", introductory text, both time the words appears;

(f) Section 78.1, definition of "Quarantined pasture", first and second sentences;

(g) Section 78.1, definition of "Specifically approved stockyard";

(h) Section 78.1, definition of "Validated brucellosis-free State", paragraph (a)(3);

(i) Section 78.1, definition of "Veterinarian in Charge";

(j) Section 78.13, all three times the word appears;

(k) Section 78.25, all three times the word appears;

(l) Section 78.30, paragraph (b), both times the word appears;

(m) Section 78.34, all three times the word appears;

(n) Section 78.44, paragraph (a);

(o) Section 78.44, paragraph (b)(1), both times the words appears;

(p) Section 78.44, paragraph (b)(2), all three times the word appears; and

(q) Section 78.44, paragraph (b)(3).

Done in Washington, DC, this 15th day of October 1991.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-25300 Filed 10-21-91; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM90-12-000]

Generic Determination of Rate of Return on Common Equity for Public Utilities

October 15, 1991.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; notice of benchmark rate of return on common equity for public utilities.

SUMMARY: In accordance with § 37.5 of its regulations, the Federal Energy Regulatory Commission, by its designee, the Director of the Office of Economic Policy, issues the update to the benchmark rate of return on common equity for public utilities applicable to rate filings made during the period November 1, 1991 through January 31, 1992. This benchmark rate is set at 11.47 percent.

EFFECTIVE DATE: November 1, 1991.

FOR FURTHER INFORMATION CONTACT: Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, (202) 208-1283.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308 at the Commission's Headquarters, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPs, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Benchmark Rate of Return on Common Equity for Public Utilities

Issued October 15, 1991.

On December 26, 1990, the Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 532) concerning the generic determination of the rate of return on common equity for public utilities.[1] In

[1] Generic Determination of Rate of Return on Common Equity for Public Utilities, Order No. 532, 56 FR 10, (January 2, 1991), Order No. 532, III FERC Statutes and Regulations ¶ 30,909 (1991).

several earlier rulemaking proceedings, the Commission established a discounted cash flow (DCF) formula to determine the average cost of common equity and a quarterly indexing procedure to calculate benchmark rates of return on common equity for public utilities and codified the formula and procedure at § 37.9 of its regulations.[2] In Order No. 532, the Commission determined that 4.3 percent is an appropriate expected annual dividend growth rate for use in the quarterly indexing procedure during the 12 months beginning February 1, 1991 and that 0.02 percent is an appropriate flotation cost adjustment factor for that period.

The Commission, by its designee, the Director of the Office of Economic Policy, uses the quarterly indexing procedure to determine that the benchmark rate of return on common equity applicable to rate filings made during the period November 1, 1991 through January 31, 1992 is 11.47 percent.

Section 37.9 of the Commission's regulations requires that the quarterly benchmark rate of return be set equal to the average cost of common equity for the jurisdictional operations of public utilities. This average cost is based on the average of the median dividend yields for the two most recent calendar quarters for a sample of 97 utilities.[3] The average yield is used in the following formula with fixed adjustment factors (determined in the most recent annual proceeding) to determine the cost rate:

$$k_t = 1.02Y_t + 4.32$$

where k_t is the average cost of common equity and Y_t is the average dividend yield.

The attached appendix provides the supporting data for this update. The median dividend yields for the sample of utilities for the second and third quarters of 1991 are 7.06 percent and 6.95, respectively. The average yield for those two quarters is 7.01 percent. Use of the average dividend yield in the above formula produces an average cost of common equity of 11.47 percent.

This notice supplements the generic rate of return rule announced in Order No. 532, issued December 26, 1990 and effective on February 1, 1991.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends part 37, chapter I, title 18 of the Code of Federal Regulations, as set forth below, effective November 1, 1991.

Richard P. O'Neill,

Director, Office of Economic Policy.

PART 37—GENERIC DETERMINATION OF RATE OF RETURN ON COMMON EQUITY FOR PUBLIC UTILITIES

1. The authority citation for part 37 continues to read as follows:

Authority: 16 U.S.C 791a–825r; 42 U.S.C. 7101–7352.

2. In § 37.9, paragraph (d) is revised to read as follows:

§ 37.9 Quarterly indexing procedure.

* * * * *

(d) *Table of Quarterly Benchmark Rates of Return.* The following table presents the quarterly benchmark rates of return on common equity:

Benchmark applicability period (t)	Dividend increase adjustment factor (a)	Expected growth adjustment factor (b)	Current dividend yield (Y_t)	Cost of common equity (k_t)	Benchmark rate of return
2/1/86–4/30/86	1.02	4.54	9.03	13.75	13.75
5/1/86–7/31/86	1.02	4.54	8.37	13.08	13.25
8/1/86–10/31/86	1.02	4.54	7.49	12.18	12.75
11/1/86–1/31/87	1.02	4.54	6.75	11.43	12.25
2/1/87–4/30/87	1.02	4.63	6.44	11.20	11.20
5/1/87–7/31/87	1.02	4.63	6.54	11.30	11.30
8/1/87–10/31/87	1.02	4.63	6.97	11.74	11.74
11/1/87–1/31/88	1.02	4.63	7.49	12.27	12.27
2/1/88–4/30/88	1.02	4.36	7.90	12.42	12.42
5/1/88–7/31/88	1.02	4.36	7.99	12.51	12.51
8/1/88–10/31/88	1.02	4.36	7.84	12.36	12.36
11/1/88–1/31/89	1.02	4.36	7.92	12.44	12.44
2/1/89–4/30/89	1.02	4.33	7.89	12.38	12.38
5/1/89–7/31/89	1.02	4.33	7.95	12.44	12.44
8/1/89–10/31/89	1.02	4.33	7.94	12.43	12.43
11/1/89–1/31/90	1.02	4.33	7.56	12.04	12.04
2/1/90–4/30/90	1.02	4.32	7.28	11.75	11.75
5/1/90–7/31/90	1.02	4.32	7.38	11.85	11.85
8/1/90–10/31/90	1.02	4.32	7.59	12.06	12.06
11/1/90–1/31/91	1.02	4.32	7.81	12.29	12.29
2/1/91–4/30/91	1.02	4.32	7.80	12.28	12.28
5/1/91–7/31/91	1.02	4.32	7.55	12.02	12.02
8/1/91–10/31/91	1.02	4.32	7.25	11.72	11.72
11/1/91–1/31/92	1.02	4.32	7.01	11.47	11.47

[2] 18 CFR 37.9. The most recent adoption of the DCF formula and quarterly indexing procedure came in Order No. 489, 53 FR 3342 (February 5, 1988).

[3] IE Industries, Inc. (IEL) changed its name to IES Industries Inc. (IES) effective July 1, 1991.

Note: The Appendix will not be published in *Code of Federal Regulations*

Appendix

Exhibit No.	Title
1	Initial sample of utilities
2	Utilities excluded from the sample for the indicated quarter due to either zero dividends or a reduction in dividends for this quarter or the prior three quarters
3	Annualized dividend yields for the indicated quarter for utilities retained in the sample

Source of Data: Standard and Poor's Compustat Services, Inc., Utility COMPUSTAT II Quarterly Data Base.

Exhibit 1—Sample of Utilities

Utility	Ticker symbol	Industry code
Allegheny Power System	AYP	4911
American Electric Power	AEP	4911
Atlantic Energy Inc	ATE	4911
Baltimore Gas & Electric	BGE	4931
Black Hills Corp	BKH	4911
Boston Edison Co	BSE	4911
Carolina Power & Light	CPL	4911
Centerior Energy Corp	CX	4911
Central & South West Corp	CSR	4911
Central Hudson Gas & Elec	CNH	4931
Central Louisiana Electri	CNL	4911
Central Maine Power Co	CTP	4911
Central Vermont Pub Serv	CV	4911
CilCorp Inc	CER	4931
Cincinnati Gas & Electric	CIN	4931
CIPSCO Inc	CIP	4931
CMS Energy Corp	CMS	4931
Conmonwealth Edison	CWE	4911
Commonwealth Energy Syste	CES	4931
Consolidated Edison of NY	ED	4931
Delmarva Power & Light	DEW	4931
Detroit Edison Co	DTE	4911
Dominion Resources Inc	D	4931
DPL Inc	DPL	4931
DQE Inc	DQE	4911
Duke Power Co	DUK	4911
Eastern Utilities Assoc	EUA	4911
Empire District Electric	EDE	4911
Entergy Corp	ETR	4911
Fitchburg Gas & Elec Ligh	FGE	4931
Florida Progress Corp	FPC	4911
FPL Group Inc	FPL	4911
General Public Utilities	GPU	4911
Green Mountain Power Corp	GMP	4911
Gulf States Utilities Co	GSU	4911
Hawaiian Electric Inds	HE	4911
Houston Industries Inc	HOU	4911
IES Industries Inc	IES	4931
Idaho Power Co	IDA	4911
Illinois Power Co	IPC	4931
Interstate Power Co	IPW	4931
Iowa-Illinois Gas & Elec	IWG	4931
IPALCO Enterprises Inc	IPL	4911
Kansas City Power & Light	KLT	4911
Kansas Gas & Electric	KGE	4911
Kansas Power & Light	KAN	4931
Kentucky Utilities Co	KU	4911
LG&E Energy Corp	LGE	4931
Long Island Lighting	LIL	4931
Maine Public Service	MAP	4911
Midwest Resources	MWR	4931
Minnesota Power & Light	MPL	4911
Montana Power Co	MTP	4931
Nevada Power Co	NVP	4911
New England Electric Syst	NES	4911
New York State Elec & Gas	NGE	4931
Niagara Mohawk Power	NMK	4931
NIPSCO Industries Inc	NI	4931
Northeast Utilities	NU	4911
Northern States Power-MN	NSP	4931
Northwestern Public Serv	NPS	4931
Ohio Edison Co	OEC	4911
Oklahoma Gas & Electric	OGE	4911
Orange & Rockland Utiliti	ORU	4931
Pacific Gas & Electric	PCG	4931
PacifiCorp	PPW	4931
Pennsylvania Power & Ligh	PPL	4911
Philadelphia Electric Co	PE	4931
Pinnacle West Capital	PNW	4911
Portland General Corp	PGN	4911
Potomac Electric Power	POM	4911
PSI Resources Inc	PIN	4911
Public Service Co of Colo	PSR	4931
Public Service Co of N H	PNH	4911
Public Service Co of N ME	PNM	4931
Public Service Entrp	PEG	4931
Puget Sound Power & Light	PSD	4911
Rochester Gas & Electric	RGS	4931
San Diego Gas & Electric	SDO	4931
SCANA Corp	SCG	4931
SCECorpORP	SCE	4911
Sierra Pacific Res	SRP	4931
Southern Co	SO	4911
Southern Indiana Gas & El	SIG	4931
St Joseph Light & Power	SAJ	4931
Teco Energy Inc	TE	4911
Texas Utilities Co	TXU	4911
TNP Enterprises Inc	TNP	4911
Tucson Electric Power Co	TEP	4911
Union Electric Co	UEP	4911
United Illuminating Co	UIL	4911
Unitil Corp	UTL	4911
UtiliCorp United Inc	UCU	4931
Washington Water Power	WWP	4931
Wisconsin Energy Corp	WEC	4931
Wisconsin Public Service	WPS	4931
WPL Holdings Inc	WPH	4931

N=97

Exhibit 2—Utilities Excluded From the Sample for the Indicated Quarter Due to Either Zero Dividends or a Cut in the Dividends for This Quarter or the Prior Three Quarters

[Year=91 Quarter=3]

Ticker symbol	Utility	Reason for exclusion
EUA	Eastern Utilities Assoc.	Dividend rate was reduced for the quarter 91Q2.
GSU	Gulf States Utilities Co.	Dividend rate was zero for quarter 91Q3.
IPC	Illinois Power Co	Dividend rate was zero for quarter 91Q3.
MWR	Midwest Resources	Insufficent history of dividends.
NMK	Niagara Mohawk Power.	Dividend rate was zero for quarter 91Q2.
PNW	Pinnacle West Capital.	Dividend rate was zero for quarter 91Q3.
PNH	Public Service of N H.	NYSE suspended trading on May 17, 1991.
PNM	Public Service Co of N ME.	Dividend rate was zero for quarter 91Q3.
TEP	Tucson Electric Power Co.	Dividend rate was zero for quarter 91Q3.

N=9

Exhibit 3—Annualized Dividend Yields for the Indicated Quarter for Utilities Retained in the Sample

[Year=91 Quarter=3]

Ticker symbol	Price, 1st month of Qtr-High	Price, 1st month of Qtr-Low	Price, 2nd month of Qtr-High	Price, 2nd month of Qtr-Low	Price, 3rd month of Qtr-High	Price, 3rd month of Qtr-Low	Average price	Dividends, annual rate	Annualized dividend yield
AEP	29.750	28.250	30.250	28.875	30.625	29.750	29.583	2.400	8.113
ATE	36.750	34.250	38.125	36.000	38.625	37.375	36.854	3.000	8.140
AYP	40.750	38.500	41.875	39.875	43.750	40.750	40.917	3.160	7.723
BGE	30.375	29.125	32.000	29.750	31.875	29.875	30.500	2.100	6.885
BKH	36.000	33.750	38.875	34.750	40.125	36.875	36.729	1.760	4.792
BSE	20.250	18.750	21.500	20.000	21.750	21.000	20.542	1.580	7.692
CER	34.250	33.375	34.500	33.250	35.250	33.625	34.042	2.460	7.226
CES	33.000	31.500	34.875	32.625	36.750	33.750	33.750	2.920	8.652
CIN	33.500	32.125	34.125	32.500	35.750	33.125	33.521	2.480	7.398
CIP	25.125	23.500	25.500	24.750	26.500	25.250	25.104	1.880	7.489
CMS	25.875	21.000	22.000	20.500	20.875	18.000	21.375	0.480	2.246

EXHIBIT 3—ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE—Continued

[Year=91 Quarter=3]

Ticker symbol	Price, 1st month of Qtr-High	Price, 1st month of Qtr-Low	Price, 2nd month of Qtr-High	Price, 2nd month of Qtr-Low	Price, 3rd month of Qtr-High	Price, 3rd month of Qtr-Low	Average price	Dividends, annual rate	Annualized dividend yield
CNH	25.500	23.750	27.000	25.500	27.875	26.500	26.021	1.920	7.379
CNL	41.125	39.750	42.625	40.875	44.250	41.500	41.688	2.680	6.429
CPL	48.375	44.750	48.500	46.000	49.750	46.875	47.375	3.040	6.417
CSR	47.375	44.250	48.250	46.125	49.750	47.250	47.167	2.920	6.191
CTP	18.000	17.000	19.375	17.750	19.750	18.750	18.438	1.560	8.461
CV	29.375	27.000	29.375	27.500	31.000	27.750	28.667	2.080	7.256
CWE	37.625	36.625	39.750	37.000	40.625	39.000	38.438	3.000	7.805
CX	16.875	15.000	17.250	16.000	18.250	17.000	16.729	1.600	9.564
D	49.250	47.125	52.000	48.375	52.750	48.750	49.708	3.440	6.920
DEW	19.125	18.250	19.750	18.625	20.125	19.000	19.146	1.540	8.044
DPL	21.375	20.125	22.375	20.875	22.750	20.875	21.396	1.620	7.572
DQE	27.500	26.000	28.625	26.875	28.875	26.500	27.396	1.440	5.256
DTE	30.000	28.250	30.750	29.000	31.875	29.875	29.958	1.880	6.275
DUK	30.000	27.375	30.875	29.000	32.500	29.500	29.875	1.720	5.757
ED	25.625	24.375	26.250	24.375	25.750	24.250	25.104	1.860	7.409
EDE	36.500	34.500	38.000	36.250	38.500	37.000	36.792	2.420	6.578
ETR	24.625	23.250	24.750	23.500	26.125	24.375	24.438	1.200	4.910
FGE	30.750	29.250	33.000	29.500	34.250	31.250	31.333	2.120	6.766
FPC	41.500	38.750	43.125	40.750	44.125	40.750	41.500	2.740	6.602
FPL	32.000	30.000	34.000	31.750	33.625	32.250	32.271	2.400	7.437
GMP	25.875	24.375	27.625	25.750	28.375	26.750	26.458	2.060	7.786
GPU	24.875	22.750	26.000	24.250	25.500	24.375	24.625	1.500	6.091
HE	34.250	31.875	34.250	33.500	35.625	33.625	33.854	2.200	6.498
HOU	38.375	35.750	39.375	37.000	39.750	37.250	37.917	2.960	7.807
IDA	25.125	24.250	26.750	24.875	26.750	25.250	25.500	1.860	7.294
IES	26.500	25.750	29.125	26.125	29.000	27.500	27.333	2.100	7.683
IPL	29.375	27.250	30.500	28.500	30.875	29.125	29.271	1.880	6.423
IPW	30.750	28.500	31.375	29.375	32.125	29.875	30.333	2.040	6.725
IWG	23.500	22.000	25.250	23.000	25.500	24.125	23.896	1.710	7.156
KAN	24.625	23.250	26.375	23.875	26.375	24.500	24.833	1.860	7.490
KGE	29.000	27.500	29.125	27.500	32.000	28.125	28.875	1.720	5.957
KLT	39.000	36.250	41.250	38.625	44.750	41.000	40.146	2.800	6.975
KU	24.500	22.375	25.875	23.875	25.750	24.125	24.417	1.500	6.143
LGE	42.375	39.750	44.500	41.625	45.125	43.500	42.813	2.920	6.820
LIL	23.625	22.125	24.500	22.750	24.250	23.125	23.396	1.700	7.266
MAP	22.250	21.375	24.250	21.875	24.250	23.125	22.854	1.680	7.351
MPL	27.750	26.250	28.875	27.000	29.000	27.875	27.792	1.900	6.837
MTP	22.750	21.500	23.750	22.250	24.000	22.875	22.854	1.480	6.476
NES	30.125	27.750	30.500	29.000	31.375	29.250	29.667	2.080	7.011
NGE	25.875	24.625	26.875	24.500	27.625	26.250	25.958	2.120	8.167
NI	22.125	20.500	23.250	21.375	24.625	22.125	22.333	1.160	5.194
NPS	25.125	24.000	24.250	23.000	25.625	23.750	24.292	1.520	6.257
NSP	36.000	33.750	37.750	35.625	39.375	37.125	36.604	2.420	6.611
NU	21.500	20.125	22.375	21.125	22.375	21.500	21.500	1.760	8.186
NVP	18.750	17.625	20.000	18.375	19.875	16.625	18.542	1.600	8.629
OEC	19.125	17.875	19.750	18.625	19.750	19.125	19.042	1.500	7.877
OGE	38.125	36.500	39.875	37.625	41.875	39.250	38.875	2.580	6.637
ORU	36.250	33.875	37.375	35.375	38.375	36.250	36.250	2.400	6.621
PCG	26.625	24.625	28.125	26.000	29.250	27.250	26.979	1.640	6.079
PE	21.125	20.000	21.500	19.875	22.875	21.250	21.104	1.200	5.686
PEG	27.375	25.875	28.625	26.875	28.375	26.750	27.313	2.120	7.762
PGN	17.750	16.500	17.875	17.000	17.500	16.375	17.167	1.200	6.990
PIN	16.000	15.375	17.125	15.625	18.000	16.875	16.500	0.880	5.333
POM	21.750	20.500	22.875	21.125	23.000	22.000	21.875	1.560	7.131
PPL	45.250	43.500	47.375	44.875	48.000	45.750	45.792	3.100	6.770
PPW	22.250	20.875	23.000	21.000	23.250	22.250	22.104	1.500	6.786
PSD	23.750	22.125	24.375	22.625	25.375	23.500	23.625	1.760	7.450
PSR	23.500	22.250	23.875	22.875	24.875	23.000	23.396	2.000	8.549
RGS	20.125	19.000	20.625	19.875	20.875	20.000	20.083	1.620	8.066
SAJ	30.875	28.250	34.250	30.625	32.875	31.000	31.313	1.660	5.301
SCE	41.875	38.625	43.875	41.500	45.375	43.000	42.375	2.720	6.419
SCG	38.625	37.125	40.500	38.000	40.500	38.500	38.875	2.620	6.740
SDO	40.000	37.125	41.875	39.625	41.875	40.250	40.125	2.800	6.978
SIG	36.500	35.250	37.375	35.625	39.000	36.250	36.667	2.000	5.455
SO	28.375	26.875	28.125	26.750	30.125	27.125	27.896	2.140	7.671
SRP	23.000	21.875	23.375	22.000	23.875	22.750	22.813	1.840	8.066
TE	35.750	33.625	36.625	34.500	38.000	35.250	35.625	1.720	4.828
TNP	19.250	17.125	20.125	18.500	19.875	17.750	18.771	1.630	8.684
TXU	37.500	34.375	38.625	36.000	38.875	36.500	36.979	3.000	8.113
UCU	25.250	24.000	26.250	24.875	26.250	25.500	25.354	1.520	5.995
UEP	31.250	29.625	32.750	30.875	34.125	31.000	31.604	2.160	6.835
UIL	34.500	32.625	34.500	32.875	34.500	33.125	33.688	2.440	7.243
UTL	36.500	35.625	37.250	36.750	38.250	36.750	36.854	2.240	6.078
WEC	34.250	31.125	35.500	33.500	36.750	34.500	34.271	1.860	5.427
WPH	27.000	25.125	28.875	26.250	30.250	27.500	27.500	1.800	6.545
WPS	25.250	23.625	26.250	25.000	26.625	25.500	25.375	1.700	6.700

EXHIBIT 3—ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE—Continued

[Year=91 Quarter=3]

Ticker symbol	Price, 1st month of Qtr-High	Price, 1st month of Qtr-Low	Price, 2nd month of Qtr-High	Price, 2nd month of Qtr-Low	Price, 3rd month of Qtr-High	Price, 3rd month of Qtr-Low	Average price	Dividends, annual rate	Annualized dividend yield
WWP.....	30.625	29.500	32.625	30.500	32.375	31.125	31.125	2.480	7.968

N=88

[FR Doc. 91-25168 Filed 10-21-91; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF LABOR

Benefits Review Board

20 CFR Parts 801 and 802

Change of Address

AGENCY: Benefits Review Board, Labor.

ACTION: Technical amendment.

SUMMARY: This document amends two sections of the Benefits Review Board's regulation in order to notify the public that the Board has moved to a new address, and that correspondence and legal pleadings are to be mailed to and filed at this new address.

EFFECTIVE DATE: October 22, 1991.

FOR FURTHER INFORMATION CONTACT: Lisa Lahrman, Executive Counsel, Clerk of the Board, telephone (202) 633-7503.

SUPPLEMENTARY INFORMATION: On August 5, 1991 the Benefits Review Board moved to new offices at the Tech World complex next to the DC Convention Center. The new address is: Benefits Review Board, U.S. Department of Labor, 800 K Street, NW., suite 500, Washington, DC 20001-8001, Telephone (202) 633-7500.

This document amends the two relevant sections in the Code of Federal Regulations in order to present the new address.

Publication in Final

The Department has determined that these amendments need not be published as a proposed rule, as generally required by the Administrative Procedure Act (APA) (5 U.S.C. 553) since this rulemaking merely reflects agency organization, procedure, or practice. It is thus exempt from notice and comment by virtue of section 553(b)(A) of the APA (5 U.S.C. 553(b)(A)).

Effective Date

This document will become effective upon publication pursuant to 5 U.S.C. 553(d). The undersigned have determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. This determination is based upon the fact that the rule is technical and non-substantive, and merely reflects agency organization, practice and procedure.

Executive Order 12291

This rule is not classified as a "rule" under Executive Order 12291 on Federal Regulation, because it is a regulation relating to agency organization, management or personnel. See section 1(a)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the APA, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601) pertaining to regulatory flexibility analysis do not apply to this rule. See 5 U.S.C. 601(2).

Paperwork Reduction Act

This final rule is not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since it does not contain any new collection of information requirements.

List of Subjects in 20 CFR Parts 801 and 802

Longshoremen (Longshore and harbor workers), Miners (coal mine workers), Workers' compensation.

Accordingly, parts 801 and 802 of title 20 of the Code of Federal Regulations is amended as follows:

PART 801—ESTABLISHMENT AND OPERATION OF THE BOARD

1. The authority citation for part 801 is revised to read as follows:

Authority: 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 FR 3174; 33 U.S.C. 901 *et seq.*; 30 U.S.C. 901 *et seq.*; Secretary of Labor's Order 38-72, 38 FR 90, January 3, 1973.

2. Section 801.303 is revised to read as follows:

§ 801.303 Location of Board's proceedings.

The Board shall hold its proceedings at 800 K Street, NW., suite 500, Washington, DC 20001-8001, unless for good cause the Board orders that proceedings in a particular matter be held in another location.

PART 802—RULES OF PRACTICE AND PROCEDURE

3. The authority citation for part 802 is revised to read as follows:

Authority: 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 FR 3174; 33 U.S.C. 901 *et seq.*; 30 U.S.C. 901 *et seq.*; Secretary of Labor's Order 38-72, 38 FR 90, January 3, 1973.

4. Section 802.204 is amended by revising the first sentence to read as follows:

§ 802.204 Place for filing notice of appeal.

Any notice of appeal shall be sent by mail or otherwise presented to the Clerk of the Board at 800 K Street, NW., suite 500, Washington, DC 20001-8001. * * *

Signed at Washington, DC this 2nd day of October, 1991.

Lynn Martin,

Secretary of Labor.

Betty J. Stage,

Chairman of the Board and Chief Administrative Appeals Judge.

[FR Doc. 91-25003 Filed 10-21-91; 8:45 am]

BILLING CODE 4510-23-M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Procedural Rules; Correction

AGENCY: National Labor Relations Board.

ACTION: Final rules; correction.

SUMMARY: On October 9, 1991, the National Labor Relations Board published at 56 FR 50820 a revision to its rules to provide for a minimum type size that may be utilized in documents filed with the Agency. We now wish to correct amendatory instruction 2 to reflect our intention to redesignate existing paragraphs in § 102.114.

EFFECTIVE DATE: November 8, 1991.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue, NW., room

701, Washington, DC 20570, Telephone: (202) 254–9430

§ 102.114 [Corrected]

Accordingly, in FR Doc. 91–24318 published October 9, 1991, at 56 FR 50820, amendatory instruction 2 in the first column of page 50821 is corrected to read as follows:

2. In § 102.114, the heading is revised, paragraphs (b) through (e) are redesignated as paragraphs (c) through (f), new paragraph (b) is added, and newly designated paragraph (c) is republished to read as follows:

Dated, Washington, DC, October 16, 1991.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 91–25366 Filed 10–21–91; 8:45 am]

BILLING CODE 7545-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1 91–148]

Safety Zone Regulations; Lower East River, New York

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the waters of the Lower East River, New York. This zone is needed to protect the maritime community from the possible navigation hazard associated with a fireworks display. Entry into this zone is prohibited unless authorized by the Captain of the Port, New York.

DATES: This regulation becomes effective at 6:30 p.m., October 27, 1991. It terminates at 7:30 p.m., October 27, 1991.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) C. W. Jennings, Waterways Management Officer, Captain of the Port, New York, at (212) 668–7933.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG C. W. Jennings, Project Officer, Captain of the Port, New York and LT J. B. Gately, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking 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 public interest since immediate action is needed to respond to any potential hazards. There was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

On September 28, 1991 the sponsor, the Association of Indians in America, requested that a fireworks display be permitted in the Port of New York in the vicinity of the Lower East River, New York. This zone is required to protect the maritime community from the dangers and potential hazards to navigation associated with this fireworks display which is occurring over a navigable waterway. No vessel will be permitted to enter or move within this zone unless permitted to do so by Captain of the Port, New York.

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.

Regulatory Evaluation

These regulations are not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Because it expects the impact of this regulation to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, they will have no significant impact and they are categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

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. A new § 165.T01148 is added to read as follows:

§ 165.T01148 Safety Zone: Lower East River, New York.

(a) *Location.* The following area has been declared a safety zone: All waters of the East River south of the Brooklyn Bridge, north of a line drawn between the Brooklyn Battery Tunnel Ventilator on Governors Island and Pier 7 Brooklyn, and east of a line drawn between the Brooklyn Tunnel Ventilator on Governors Island and Slip 7 Manhattan.

(b) *Effective date.* This regulation becomes effective at 6:30 p.m., October 27, 1991. It terminates at 7:30 p.m., October 27, 1991.

(c) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port.

Dated: October 8, 1991.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 91–25412 Filed 10–21–91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 413, 482, and 483

[BPD–493–F]

RIN 0938–AD83

Medicare Program; Swing-Bed Program Changes

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule responds to comments we received on an interim final rule relating to hospital swing beds that was published on September 7, 1989 (54 FR 37270). The interim rule expanded the swing-bed program to encompass rural hospitals with 50 to 99 beds. It established requirements that approved swing-bed hospitals with more than 49 beds must meet.

This rule establishes the interim rules as final regulations with changes. These changes are based on our review and consideration of the public comments.

EFFECTIVE DATE: These final regulations are effective on November 21, 1991.

FOR FURTHER INFORMATION CONTACT: Thomas Hoyer, (301) 966–4607, (Coverage Issues) and Linda McKenna, (301) 966–4530, (Reimbursement Issues).

SUPPLEMENTARY INFORMATION:

I. Background

Hospitals participating in Medicare and Medicaid, in addition to providing an inpatient hospital level of care, may also provide a skilled nursing facility (SNF) or nursing facility (NF) level of care through the establishment of a separately participating "distinct part" unit. (The term "nursing facility" replaces the terms "skilled nursing facility" and "intermediate care facility" in the Medicaid program.) Among other requirements, a distinct part SNF or NF must be an entire separately-identifiable unit consisting of all the beds within that unit (such as a separate building, floor, wing, or corridor). A distinct-part SNF or NF unit is paid as an entity separate from the rest of the institution.

Small rural hospitals had difficulty in establishing identifiable units for SNF or NF level of care because of limitations in their physical plant and accounting capabilities. These hospitals often had an excess of hospital beds, while their communities had a scarcity of SNF beds in Medicare and Medicaid participating facilities. To alleviate this problem, Congress enacted section 904 (the swing-bed provision) of the Omnibus Reconciliation Act of 1980 (Pub. L. 96–499). Section 904 enacted sections 1883 and 1913 of the Social Security Act (the Act), under which rural hospitals with fewer than 50 beds may use their inpatient facilities to furnish SNF services to Medicare beneficiaries and NF services to Medicaid beneficiaries. Hospitals with approved swing-bed programs that furnish SNF or NF services are paid at rates that are appropriate for those services and that are generally lower than hospital rates.

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) was enacted. Section 4005(b) of Pub. L. 100–203 amends section 1883(b)(1) of the Act to expand the swing-bed program to rural hospitals with fewer than 100 beds.

Section 4005(b) of Public Law 100–203 amends section 1883(d) of the Act by adding the following requirements and definitions:

- Payment for extended care services furnished by hospitals with more than 49 beds but fewer than 100 beds, approved as swing-bed hospitals by Medicare after March 31, 1988, may not be made for extended care services furnished to a swing-bed hospital extended care patient more than 5 days (excluding weekends and holidays) after a bed in an SNF becomes available in the geographic region, unless the patient's physician certifies within the 5-day period that the transfer of the patient is not medically appropriate.
- The term "extended care patient" means an individual being furnished extended care services at a swing-bed hospital under an agreement with the Secretary.
- The term "availability date" means, with respect to an extended care patient at a swing-bed hospital, any date on which a bed is available for the patient in an SNF located within the geographic region (as defined by the Secretary) in which the hospital is located.
- The Secretary must promulgate regulations to provide for notice by SNFs of availability dates to hospitals with swing-bed agreements located within the same geographic region.
- In the case of a hospital that has more than 49 beds and a swing-bed agreement after March 31, 1988, the hospital will not seek payment in a cost reporting period for patient days of extended care services that exceed 15 percent of the product of the number of days in the period and the average number of licensed beds in the hospital in the period.

These swing-bed amendments do not affect providers operating under section 1883 agreements entered into before March 31, 1988.

On July 1, 1988, the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360) was enacted. Section 411(b)(4)(D) of Public Law 100–360 adds a technical amendment to the 15 percent payment limitation by providing continued payment for those patients in the swing-bed hospital receiving extended care services at the time the limit is reached.

II. The September 7, 1989 Interim Final Rule

In developing the interim final rule, we essentially relied on the language of the statute, as amended by section 4005(b) of Public Law 100–203 and section 411(b)(4)(D) of Public Law 100–360.

A. Requirements Relating to Payment for Extended Care Services in a Swing-Bed Hospital

Regulations at § 413.114 explain the reimbursement methodology for those rural hospitals that participate in the swing-bed program. In § 413.114, we defined "geographic region" to mean an area that includes the SNFs with which a hospital has traditionally arranged transfers and all other SNFs within the same proximity to the hospital. In the case of a hospital without existing transfer practices upon which to base a determination, the geographic region is an area that includes all the SNF's within 50 miles of the hospital unless the hospital can demonstrate that the SNFs are inaccessible to its patients. In the event of a dispute as to whether an SNF is within a hospital's geographic region, or whether the SNF is inaccessible to hospital patients, the HCFA Regional Office will make a determination.

We defined "availability date" to mean, with respect to an extended care patient in a swing-bed hospital, the later of—

- The date on which a bed is available for the patient in an SNF located within the hospital's geographic region;
- The date that a hospital learns that an SNF bed is available; or
- If the notice is prospective, the date that an SNF bed will become available.

In § 413.114, we added a new paragraph (d) that describes certain payment requirements for rural hospitals with more than 49 beds (but fewer than 100) that wish to participate as swing-bed hospitals. The first requirement states that if there is an available SNF bed in the geographic region, the extended care patient must be transferred within a 5–day period (excluding weekends and holidays) beginning on the availability date of the SNF bed unless the patient's physician certifies within that 5–day period that transfer is not medically appropriate.

Under the second requirement, Medicare will not pay hospitals for SNF services that exceed 15 percent of the product of the number of days in the period and the average number of licensed beds in the hospital in the same period. In those States that do not

license hospital beds, the hospitals must use the total average of hospital beds reported on their most recent Certificate of Need (CON) (excluding bassinets). If during the cost reporting period, there is an increase or decrease in the number of "licensed" beds, the number of "licensed" beds for each part of the period is to be multiplied by the number of days for which that number of "licensed" beds was available. After totalling the results, 15 percent of the total available "licensed" bed days is computed to determine the payment limitation.

This new subsection of § 413.114 also specified the payment restrictions that are applicable to swing-bed hospitals with more than 49 beds. The first restriction stated that hospitals must not seek payment for extended care services after the end of the 5–day period (excluding weekends and holidays) beginning on the availability date of an SNF bed unless the patient's physician has certified, within that 5–day period, that the transfer of the patient to the SNF was not medically appropriate.

The second payment restriction stated that a swing-bed hospital with more than 49 beds must not seek payment for extended care services in a cost reporting period to the extent that they exceed 15 percent of the product of the number of days in the period and the average number of licensed beds in the hospital in the period. In those States that do not license hospital beds, the hospital must use the average number of hospital beds reported on its most recent CON, excluding bassinets.

We also added a new § 413.114(d)(3) that described the exception to the payment limitation. This exception stated that Medicare payment will be continued for those patients who are receiving extended care services in the swing-bed hospital at the time the 15 percent limit is reached.

B. Requirements for Posthospital SNF Care

Regulations at § 424.20 specify the requirements for Medicare payment of posthospital SNF care. The interim final rule revised § 424.20(a) to add the certification requirements set forth in section 1883(d) of the Act. These requirements make it clear that if the swing-bed hospital does not transfer the patient to an SNF within 5 days of the availability date, as defined in § 413.114(b), the extended care patient's physician must certify that the transfer of the patient was not medically appropriate.

In addition, we added a new § 424.20(b)(2) to require the physician of an extended care patient to certify within 5 days (excluding weekends and holidays) of the availability date, that transfer of the patient is not medically appropriate.

C. Special Requirements for Hospital Providers of Long-Term Care Services

Regulations at § 482.66 contain the special requirements that hospital providers of long-term care services (swing-beds) must meet in order to be approved to provide post-hospital extended care services. We revised the title of § 482.66 by dropping the term "Conditions of Participation" and retitling it as "Special Requirements" because the requirements found in this section are not traditional conditions of health and safety. Rather, they are requirements relating to approval of hospitals wishing to have swing-bed approvals. We revised § 482.66(a)(1) to expand the swing-bed program to hospitals with fewer than 100 beds, excluding beds for newborns and beds in intensive care type inpatient units or distinct parts.

We also added a new paragraph (a)(6) to § 482.66 to specify the requirements of the availability agreement between SNFs and hospitals with more than 49 beds (but fewer than 100) approved after March 31, 1988. In a new paragraph (a)(6)(i), we specified that hospitals must have an availability agreement with SNFs in their geographic region that insures that each SNF will notify the hospital when an extended care bed becomes available. In a new paragraph (a)(6)(ii), we specified that, once the hospital learns of the availability date of an SNF bed, it must transfer the swing-bed extended care patient within 5 days (excluding weekends and holidays) of that date, unless the patient's physician certified that the transfer is not medically appropriate. Hospitals with under 50 beds are not subject to the 5-day transfer requirement.

In a new paragraph (a)(7), we specified the methodology for determining the number of beds a hospital has for purposes of this section. In paragraph (a)(7)(i), we specified that a hospital bed count is calculated by excluding from the count beds that, because of their special nature, such as newborn and intensive care beds, would not be available for swing-bed use. Also excluded from the bed count are beds in separately-certified "distinct part" SNFs and NFs. At paragraph (a)(7)(ii), we specified that a hospital licensed for more than 49 beds or 99 beds, as the case may be, will be considered to have the number of beds that it consistently utilizes and staffs. Hospitals, at a minimum, document their count by staffing schedules and census information for the previous 12 months before application to be a swing-bed hospital. The hospital must provide written assurance to HCFA that it will not operate over 49 or over 99 beds, excluding newborn and intensive or coronary care beds, except in connection with a catastrophic event.

D. Requirements for Long Term Care Facilities

We added a new § 483.80 that describes the special requirements that SNFs must have with swing-bed hospitals. We stated that an SNF that has an availability agreement to accept extended care patients from swing-bed hospitals must provide notice of when beds are available. We also replaced the cross-references to SNF regulations that appeared in § 482.66 with references to the SNF regulations we published on February 2, 1989 (54 FR 5316).

III. Responses to Public Comments

We received five timely pieces of correspondence on the interim final rule. The commenters included hospitals, a national hospital association, and a national medical association.

A. Availability Agreements

Comment: One commenter believed a penalty should be imposed on SNFs for not complying with availability agreements. As an example, the commenter cited that his hospital mailed 27 availability agreements to nursing homes within his hospital's geographic region. Of the four that responded, only one regularly contacts him with bed availability information.

Response: As stated in section I of this preamble, the swing-bed program was established to alleviate the shortage of SNF beds in some rural areas. However, with the introduction of legislation to expand the swing-bed program to hospitals with between 50 to 99 licensed beds, there was a concern that longer term patients should have the opportunity to receive care in an SNF, since SNFs are specifically designed to accommodate such residents. The statutory provisions that swing-bed patients be transferred if the hospital is notified of an available SNF bed and the non-coverage of services in accordance with the 15 percent payment limitation address this concern by ensuring available SNF beds can be filled with patients who are in swing-beds. When we drafted the interim final rule, we intended that our regulations provide SNFs with the opportunity to seek admission of swing-bed patients; we did not intend to require SNFs to seek admission. We believe it would not

be appropriate to compel SNFs to admit patients; accordingly, it would be counterproductive to require all SNFs to enter into availability agreements, because some agreements would not lead to transfers of patients.

In reexamining our interim final rule as we considered comments such as the one above, we realized that the language we used did not achieve the result intended. While we ensured that SNFs would have the option to admit some swing-bed patients, we stated the provision as an additional requirement on SNFs, that is, that SNFs must enter into availability agreements. We are correcting this in this final rule by deleting § 483.80, which required that SNFs enter into availability agreements. We are revising § 482.66(a), which includes, among the requirements a hospital must meet to be eligible to be a swing-bed hospital, the requirement that the hospital have an availability agreement with SNFs in its geographic region. The revision makes clear that a swing-bed hospital must have an availability agreement with each SNF in its geographic region unless the SNF is not willing to enter into an agreement. If a swing-bed hospital offers an availability agreement to an SNF, the SNF would have discretion to refuse to enter into the agreement. This revision also makes clear that an availability agreement is not required if there is no SNF in the geographic region.

Comment: A commenter suggested that the regulations mandate what actions SNFs are to take to systematically provide hospitals with information about the availability of an SNF bed.

Response: The hospital and the SNF, in developing the availability agreement and transfer agreement, should work out the details of availability and placement. We believe specific provisions on how notification should take place and the frequency or methods of transmitting the information are best left to the discretion of the providers that establish the agreements.

B. Geographic Region

Comment: One commenter suggested that the regulations explicitly provide that a geographic region should include 50 road and bridge miles and not water miles. The commenter stated that hospitals should not have the burden of proof of continually assuring on a case-by-case basis that the SNF is inaccessible to patients simply because non-bridge water transportation makes the SNF within 50 miles of a swing-bed hospital.

Response: Determinations as to geographic region would be made only one time, that is, when the hospital establishes its geographic region and enters into availability agreements with SNFs. (We note that, in § 483.80 of the interim final rule, we refer to "* * * the SNF's geographic region * * *" This is an error; we intended to refer to a "hospital geographic region." However, as stated above, § 483.80 has been deleted.) Once the hospital has established its geographic region and entered into availability agreements, a patient must be transferred to any Medicare-participating SNF with an available bed unless the patient's physician certifies that the transfer is not medically appropriate. In terms of miles, the definition at § 412.92(c)(1) for miles for sole community hospitals is applied in this instance. The term "miles" means the shortest distance in miles measured over improved roads. An improved road for this purpose is any road that is maintained by a local, State, or Federal government entity and that is available for use by the general public. Therefore, water miles are not a consideration in this matter. We have revised, in this final rule, the definition of miles contained in § 412.92(c)(1).

Comment: A commenter also indicated that the regulations should explicitly state that the 50 miles cross State borders. In the absence of specificity, the commenter assumed that the geographic regions are intended to mean within a State. The commenter also expressed concern that, if the geographic region included more than one State, the implementation process could become chaotic if the States have differing regulatory protocols.

Response: Since the Congress did not clearly restrict the geographic region to single States, we believe the concept clearly applies across State lines. We do not believe the regulation requires revision to make this point since service areas have frequently overlapped State borders and providers doing business in such locations are familiar with how rules apply in such situations.

Comment: One association stated that it is pleased to see us clarify that we would take inaccessibility from the patient's home into consideration when determining whether an SNF is in a hospital's geographic region.

Response: The commenter misunderstood our proposal. Determinations as to an SNF's inaccessibility are to be made based on inaccessibility from the hospital, not the patient's home, since the transfer is occurring from the hospital and not from the patient's home. It would be impossible, in determining a hospital's geographic region, to determine prospectively whether or not an SNF is accessible to the homes of all of the hospital's future patients.

C. 5-day Transfer Rule

Comment: One commenter said there is nothing in the regulations to compel an SNF to accept the patient in transfer from the hospital and asserted that this places the hospital in the position of being required, yet unable, to transfer its extended-care patients. The commenter suggested that a regulation be added requiring SNFs to accept patients who meet skilled level criteria.

Response: There is nothing in the law or regulations to compel SNFs to accept patients in transfer from swing-bed hospitals, and we do not believe it is appropriate to add such requirements specifically with respect to hospital swing beds. A hospital with swing-bed patients that is unable to effect a transfer would continue to provide extended-care services to the patient. A hospital that wishes to be assured that SNFs will accept its patients should establish conditions to achieve this result, beforehand, when the hospital and the SNFs work out their availability agreements and transfer agreements. The purpose of the transfer requirement is, in our view, to assure that hospitals of between 50 and 99 beds would not retain SNF patients for more than 5 days when SNF beds are available in the locality. If there are not SNF beds available, it is clearly appropriate for patients who need SNF care to remain in hospitals.

Comment: One commenter suggested that Federal regulations should supersede State laws and regulations The interim final regulations provide that hospitals with fewer than 50 beds are not subject to the 5-day transfer requirement. This commenter further pointed out that some State laws may have swing-bed regulations that subject such hospitals to the 5-day transfer requirement. For this and other conflicting requirements that may be in State laws, the commenter suggested the Federal regulations should explicitly take precedence. The commenter was concerned that litigation may occur over conflicting requirements.

Response: Federal requirements are binding with respect to the issues to which they apply but do not restrict State options to impose higher or more restrictive standards in the absence of a specific statutory prohibition. The commenter's suggestion goes beyond our authority to implement this provision.

However, we wish to clarify that, as specified in § 482.66(a) (2), for purposes of swing-bed hospitals, the definition of "rural" in these regulations is based upon the most recent population census and includes all areas not delineated as "urbanized" by the Census Bureau. Once the 1990 census is published, a facility would be reevaluated upon the next survey to determine if it continues to meet the definition of "rural." A State cannot use a definition of rural that is at odds with the determination made in the most recent census.

Comment: A commenter suggested that if an SNF bed is available at two or more SNFs, the regulations should provide that the patient and his or her physician shall select the SNF to which the patient will be transferred.

Response: The details of availability agreements and their terms are details that the hospitals and facilities must work out. The statute does not specify the contents or level of detail for these arrangements. A patient has the freedom to choose among available alternatives.

Comment: One commenter remarked that hospitals cannot transfer patients who refuse to leave the hospital and that § 413.114(d)(2)(i) would effectively require the hospital to forgo payment after the fifth day that a bed becomes available even if the patient refuses the transfer. The commenter stated that, if HCFA considers the services provided after the fifth day as noncovered services, the hospital would have to submit a letter to the beneficiary explaining the noncoverage of the continued stay and bill the patient for services furnished after receipt of the notice. The commenter said that this would put the hospital in a position of collecting from the patient for services that could be covered by Medicare if provided elsewhere. To avoid this result, the commenter suggested revising § 413.114(b), which defines "availability date," to indicate that an SNF bed, for payment purposes, is not an available bed if a patient does not consent to transfer. This commenter also suggested that if this definition cannot be revised, then clarification should be made that the hospital services furnished after the fifth day of an SNF notice of an available bed to which a patient refuses transfer are considered noncovered services under Medicare and are the financial responsibility of the patient.

Response: Medicare payment for SNF swing-bed services ceases after 5 days after a bed becomes available in a Medicare-participating SNF in the hospital's geographic region, unless the beneficiary's physician certifies within that 5-day period that the beneficiary's transfer to the SNF would not be medically appropriate. The law does not offer the latitude to consider patient preference as a valid reason for extending Medicare payment for services in the hospital swing-bed. Therefore, we have rejected the suggestion that we revise § 413.114(b) to indicate that an SNF bed, for payment purposes, is not an available bed if the patient does not consent to the transfer. Under § 412.42(c), which addresses beneficiary liability for medically unnecessary inpatient hospital care, the beneficiary's liability for payment for extended care services after the 5-day period has expired is dependent upon the hospital's giving prior notice to the beneficiary of this liability.

These notices, which may be given upon admission for long term care or upon change of status, as appropriate, must include language indicating that the patient will be liable for payment after the expiration of the 5 days if a Medicare-certified SNF bed is available in the geographic region and the beneficiary's physician has not certified that a transfer to the facility would be medically inappropriate. No change in the regulations is needed to accomplish this result. We are, however, revising §§ 413.114(d)(2) (i) and (ii), which concern payment restrictions, by changing "The hospital must not seek payment * * *" to "The hospital must not seek Medicare payment * * *" This change is made to clarify that the restriction on seeking payment does not apply to seeking payment from the beneficiary or other third-party payer.

Comment: One commenter indicated that the SNF is not necessarily required to keep a bed open while the patient accepts the transfer. If the bed is no longer available when the patient is ready for the transfer, this commenter wanted the hospital to keep the patient and not be subject to the 5-day-transfer rule. This commenter wanted the availability agreements to ensure that hospitals transfer patients expeditiously so that the SNF is not unnecessarily holding beds open without payment.

Response: As we stated earlier, SNFs and hospitals are responsible for working out details of the transfers and availability of beds. However, a transfer is necessary only when a bed is available. If an SNF bed is not available, transfer is not necessary until a bed is found.

D. Other

Comment: One commenter suggested that, under section 1883(g) of the Act, the Secretary may enter into agreements for demonstration swing-bed programs with any hospital that does not meet the fewer-than-100 beds requirement. This commenter urged the Secretary to establish these demonstration agreements to allow "all" acute-care hospitals to designate a specific number of their hospital beds as swing beds. In this commenter's view, utilization of unused hospital beds for SNF care will help improve the quality of patient care by limiting transfers and allowing greater continuity of care.

Response: The Secretary may permit demonstration projects, but we believe the premise of a demonstration project is a study of the effect of possible changes on access to care or the use of care on the Medicare program. We do not believe it would be appropriate for the Secretary to use this authority to establish a Medicare benefit considered for enactment by the Congress and not enacted.

Comment: A commenter suggested that the regulations should provide that HCFA make available to patients the names of hospitals participating in the Medicare swing-bed program and whether the hospital has 49 or fewer beds or more than 49 but fewer than 100 beds. This commenter believed this information can assist patients in utilizing their Medicare benefits.

Response: Interested parties can obtain this information from the hospitals to which they may be considering admission. While we recognize this information may affect beneficiary choice, there are many other factors, such as staffing and hospital specialties, that affect choice, and we do not believe it is feasible to provide so broad an array of current information on a national basis.

Although the commenter did not raise the issue of how bed counts are calculated, we are taking this opportunity to provide the following clarification. Since pediatric neonatal beds are so specialized that they could not be used for SNF care, we have long omitted such beds from our counts. The same is not true of other specialized beds such as Clinitron beds. However, it should be noted that, under §§ 412.25 and 412.27, beds in distinct part psychiatric and rehabilitative units that are excluded from Medicare's prospective payment system are not available for general acute care use and, thus, are excluded from the hospital's bed count. We have revised § 482.66(a)(7)(i) by adding that these psychiatric and rehabilitative beds are excluded from the bed count.

Further, in the preamble of the interim final rule, we stated that a swing-bed hospital must provide written assurance

to HCFA that they will not operate over 49 or over 99 beds, excluding newborn and intensive or coronary care beds, except in connection with a catastrophic event. We have chosen not to define a catastrophe in regulations because such events vary too much in their nature and duration to be defined. We will rely upon our regional offices to determine on a case-by-case basis whether a hospital's usual census is within the acceptable range for designation as a swing-bed hospital.

Comment: One commenter asked that the definition of "availability date" in § 413.114(b) be revised to indicate that the available bed is "Medicare certified."

Response: The agreements for availability are only required between Medicare-participating facilities. As the commenter requested, we have revised § 413.114(b) to specify that "availability date" means the later of (1) any date on which a bed is available for the patient in a Medicare-participating SNF located within the hospital's geographic region; (2) the date a hospital learns that a bed is available in a Medicare-participating SNF; or (3) if the notice is prospective, the date that a bed will be available in a Medicare-participating SNF.

Comment: One commenter suggested that the minimum standards for Medicare supplemental insurance policies be amended to include payment for services in swing-bed hospitals of from 50 to 99 beds in cases in which those hospitals have already provided the maximum amount of swing-bed care authorized under the law (that is, when the hospitals SNF days exceed 15 percent of its total inpatient days).

Response: The minimum standards for Medicare supplemental insurance policies are established by the National Association of Insurance Commissioners (NAIC), not HCFA. The issue has not, to our knowledge, arisen in connection with the NAIC's consideration of these policies.

Comment: One commenter, a hospital association, disagreed with HCFA's decision not to extend the optional reimbursement method to those rural hospital-SNF complexes with a combined bed count of more than 49 beds (but fewer than 100). (Under the optional reimbursement method, the general routine service costs of the hospital component and SNF component are combined into a single cost center for purposes of computing the average cost per diem for hospital and SNF services. However, the two components remain as separate providers for certification and coverage purposes. To qualify for this method, a hospital-SNF complex must be located in a rural area and the hospital and SNF must have a combined bed count of fewer than 50 beds.) The commenter stated that facilities with more than 49 beds that serve areas with a high need for skilled nursing services but low SNF bed availability may run into difficulty staying under the 15 percent patient day limit on swing-bed care. The commenter believed that extending the reimbursement option to these hospitals would encourage these hospitals to convert some of their acute beds into a distinct-part SNF in response to the needs of their community. The commenter also stated that bed size alone does not predict financial viability and that there is no reason to believe that a 50-bed facility has more extensive resources for maintaining its distinct-part SNF or its acute-care beds than a 49-bed facility.

Response: We continue to believe that the availability of the swing-bed payment methodology should be limited to those hospital-SNF complexes having a combined bed count of less than 50 beds. Originally, the option was made available to these very small facilities based on congressional concern that such facilities experienced greater burden.

The commenter indicated that there is very little difference between a 49-bed and a 50-bed facility. We agree, but we also believe there is a more significant difference between a 49-bed facility and a 99-bed facility. Considering the overall intent of the relief being afforded, we believe the current cut-off point for use of the optional reimbursement method is appropriate.

In addition, if the larger hospital-SNF complexes are permitted to elect the optional reimbursement method, we believe these facilities would receive an unfair advantage because distinct-part SNFs are not subject to the new additional legislatively-mandated limitations, whereas the larger swing-bed hospitals (without a distinct part) are subject to those limitations (that is, the 5-day transfer rule and the 15 percent payment cap). We also believe that to allow these larger complexes to elect this method without imposing the limitations would be inconsistent with congressional intent.

IV. Provisions of the Final Rule

This final rule reflects the interim final rule, with changes. A change to § 482.66(b) is explained below. All other substantive changes, which are listed below, have been discussed in Section III of this preamble. We are also making the technical changes listed below. Additionally, we are providing a clarification below.

- Section 413.114(b), which defines "availability date," is revised to specify that the availability refers to a bed in a Medicare-participating SNF.
- Section 413.114(b), which also defines "geographic region," is further revised to include a cross-reference to the definition of miles contained in § 412.92(c)(1).
- Section 482.66(a)(6), which provides that, in order to be eligible as a swing-bed hospital, the hospital must have an availability agreement with SNFs in its geographic region, is revised to clarify that swingbed hospitals must have an availability agreement with each Medicare-participating SNF in its geographic region unless the SNF is not willing to enter into an agreement. An availability agreement is not required if there is no SNF in the hospital's geographic region.
- Section 482.66(a)(7)(i), which addresses hospital bed count, is revised by adding that also excluded from bed counts are distinct part psychiatric and rehabilitation units that are excluded from Medicare's prospective payment system for hospitals.
- The list of SNF requirements that swing-bed hospitals must meet that is contained in § 482.66(b) is revised. We provided the list in the interim rule with the explanation that we were substituting citations to comparable requirements in the new long term care facility regulations for the citations to the SNF conditions of participation. A reexamination of the list revealed that we had made errors. We have revised the list to reflect what we believe are the comparable citations. The revision includes both insertions and deletions. We are not imposing additional substantive requirements; we are merely updating the requirements to reflect revised nursing facility requirements. Also, the reference in § 482.66(b) to provisions in "Subpart D of Part 483 of this chapter" is incorrect. We have corrected the reference to read "subpart B of part 483 of this chapter". (It has come to our attention that some readers were confused by the reference, in our interim final rule, to part 483 rather than to part 405, the regulations then in effect. By way of explanation, we had anticipated that the regulations in part 483 would be effective by the time the interim regulations were published in the Federal Register, and that is why citations to regulations in part 483 were used instead of citations to part 405. Part 483 is now in effect.)

• Section 483.80, which required that SNFs enter into availability agreements, has been deleted.

We have also made the following technical corrections:

• In § 413.114, we have removed the words "an extended care patient" and "extended care services" and added, in their place, the words "a posthospital SNF care patient" and "posthospital SNF care", respectively. This change reflects current terminology.

• In § 482.66(a)(4), we have changed the cross-reference to 24-hour nursing waivers under § 405.1910(c) to § 488.54(c) to reflect an earlier redesignation of § 405.1910(c).

We are clarifying that the requirement that a patient must spend at least 3 days in a hospital receiving hospital level care before Medicare would cover SNF services in a swing bed continues to apply. This requirement was reinstated by Public Law 101–234, the Medicare Catastrophic Coverage Repeal Act of 1989.

V. Regulatory Impact, Regulatory Flexibility Analysis, and Rural Impact Statements

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any rule that meets one of the E.O. criteria for a "major rule"; that is, a rule that would be likely to result in—

• An annual effect on the economy of $100 million or more;

• A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

• Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all hospitals are treated as small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

Because this final rule essentially reflects the provisions of the September 7, 1989 interim final rule, we are not providing a regulatory impact statement, a regulatory flexibility analysis, or a rural impact statement in this final rule. Readers may refer to these statements in the interim final rule (54 FR 37270).

VI. Information Collection Requirements

This final rule does not impose any information and collection requirements that were not contained in the September 7, 1989 interim final rule. Consequently, it does not need to be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 482

Grant programs—health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

Accordingly, the interim rule amending 4 CFR chapter IV, parts 413, 482, and 483 which was published at 54 FR 37270 on September 7, 1989, is adopted as a final rule with the following changes:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

A. Part 413 is amended as follows:

1. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

Subpart F—Specific Categories of Costs

2. In § 413.114, the words "an extended care patient" are removed from paragraph (d)(1)(i) and the words "a posthospital SNF care patient" added in their place, and the words "extended care services" are removed wherever they appear in paragraphs (a), (c), and (d) and the words "posthospital SNF care" added in their place.

3. In § 413.114, paragraph (b) is revised to read as follows:

§ 413.114 Payment for posthospital SNF care furnished by a swing-bed hospital.

* * * * *

(b) *Definitions.* For purposes of this section—*Availability date* means with respect to a posthospital SNF care patient in a swing-bed hospital, the later of—

(i) Any date on which a bed is available for the patient in a Medicare-participating SNF located within the hospital's geographic region;

(ii) The date that a hospital learns that a bed is available in a Medicare-participating SNF; or

(iii) If the notice is prospective, the date that a bed will become available in a Medicare-participating SNF.

Geographic region means an area that includes the SNFs with which a hospital has traditionally arranged transfers and all other SNFs within the same proximity to the hospital. In the case of a hospital without existing transfer practices upon which to base a determination, the geographic region is an area that includes all the SNFs within 50 miles (as defined in § 412.92(c)(1) of this chapter) of the hospital unless the hospital can demonstrate that the SNFs are inaccessible to its patients. In the event of a dispute as to whether an SNF is within a hospital's geographic region or the SNF is inaccessible to hospital patients, the HCFA Regional Office makes a determination.

Swing-bed hospital means a hospital participating in Medicare that has an approval from HCFA to provide posthospital SNF care, as defined in § 409.20 of this chapter, and meets the requirements specified in § 482.66 of this chapter.

* * * * *

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

B. Part 482 is amended as follows:

1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102, 1136, 1814(a)(6), 1861(e), (f), (k), (r), (v)(1)(G), (z), and (ee), 1864, 1871, 1883, 1886, 1902(a)(30), and 1905(a) of the Social Security Act (42 U.S.C. 1302, 1338, 1395f(a)(6), 1395x(e), (f), (k), (r), (v)(1)(G), (z) and (ee), 1395aa, 1395hh, 1395tt, 1395ww, 1396a(a)(30), and 1396d(a)).

Subpart E—Requirements for Specialty Hospitals

2. In § 482.66, the introductory texts of the section and of paragraph (a) are republished; paragraph (a)(4) is revised; the introductory text of paragraph (a)(6) is republished; paragraph (a)(6)(i) is revised; the introductory text of paragraph (a)(7) is republished; and paragraphs (a)(7)(i) and (b) are revised, to read as follows:

§ 482.66 Special requirements for hospital providers of long-term care services ("swing-beds").

A hospital that has a Medicare provider agreement must meet the following requirements in order to be granted an approval from HCFA to provide post-hospital extended care services, as specified in § 409.30 of this chapter, and be reimbursed as a swing-bed hospital, as specified in § 413.114 of this chapter:

(a) *Eligibility.* A hospital must meet the following eligibility requirements:

* * * * *

(4) The hospital does not have in effect a 24-hour nursing waiver granted under § 488.54(c) of this chapter.

* * * * *

(6) A hospital with more than 49 beds (but fewer than 100) approved under this section after March 31, 1988, must—

(i) Unless a Medicare-participating SNF is not available or the SNFs are not willing to enter into an agreement when one is offered, have an availability agreement with each SNF in its geographic region that requires the SNF to notify the hospital of the availability of posthospital SNF care beds and the dates when those beds will be available; and

* * * * *

(7) The hospital must provide written assurance to HCFA that the hospital will not operate over 49 or over 99 beds except in connection with a catastrophic event. The hospital bed count is determined as follows:

(i) A hospital bed count is calculated by excluding from the count, beds that because of their special nature, such as newborn and intensive care beds, would not be available for swing-bed use. Also excluded from the bed count are beds in separately certified "distinct part" SNFs and NFs and beds in a distinct part psychiatric or rehabilitation unit that is excluded from the prospective payment system.

* * * * *

(b) *Skilled nursing facility services.* The facility is substantially in compliance with the following skilled nursing facility requirements contained in subpart B of part 483 of this chapter.

(1) Resident rights (§ 483.10 (b)(3), (b)(4), (b)(5), (b)(6), (d), (e), (h), (i), (j)(1)(vii), (j)(1)(viii), (l), and (m)).

(2) Admission, transfer, and discharge rights (§ 483.12 (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7)).

(3) Resident behavior and facility practices (§ 483.13).

(4) Patient activities (§ 483.15(f)).

(5) Social services (§ 483.15(g)).

(6) Discharge planning (§ 483.20(e)).

(7) Specialized rehabilitative services (§ 483.45).

(8) Dental services (§ 483.55).

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

C. Part 483 is amended as follows:

1. The authority citation for part 483 is revised to read as follows:

Authority: Secs. 1102, 1819 (a)–(d), 1861 (j) and (l), 1863, 1871, 1902(a)(28), 1905 (a) and (c), and 1919 (a)–(d) of the Social Security Act (42 U.S.C. 1302, 1395(i)(3) (a)–(d), 1395x (j) and (l), l395hh, 1396a(a)(28), 1396d (a) and (c), and 1396r (a)–(d)), unless otherwise noted.

Subpart B—Requirements for Long Term Care Facilities

§ 483.80 [Removed]

2. Section 483.80 is removed.

(Catalog of Federal Domestic Assistance Program—Medicare Program: Hospital Insurance—No. 93.744)

Dated: April 7, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: June 26, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91–24759 Filed 10–21–91; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–619; RM–5907, RM–6132, RM–6322]

Radio Broadcasting Services; Gosnell and Osceola, AR, and Germantown and Ripley, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, in response to a petition for reconsideration filed by Pollack Broadcasting Company, allots Channel 297A to Osceola, Arkansas, as that community's second local FM broadcast transmission service. See 54 FR 33227 (August 14, 1989). Channel 297A can be allotted to Osceola in compliance with the Commission's minimum distance separation requirements at North Latitude 35–43–03 and West Longitude 89–55–58, with a site restriction of 3.4 kilometers (2.1 miles) northeast of the community to prevent short-spacings to Station KFTH, Channel 296A, Marion, Arkansas, and to Station KFIN, Channel 300C1, Jonesboro, Arkansas. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 6, 1991. The filing window for Channel 297A at Osceola will open on September 9, 1991, and close on October 9, 1991.

FOR FURTHER INFORMATION CONTACT: Michael C. Ruger, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 87–619, adopted July 22, 1991, and released July 23, 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, Downtown Copy Center, (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

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 Arkansas, is amended by adding Channel 297A at Gosnell.

Federal Communications Commission.

Beverly McKittrick,

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

[FR Doc. 91–25359 Filed 10–21–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–599; RM–7523]

Radio Broadcasting Services; Fort Bragg, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 244B for Channel 244A at Fort Bragg, California, and modifies the permit for Station KLLK–FM to specify operation on the higher powered channel, as requested by The Henry Radio Company. See 55 FR 51305, December 13, 1990. Coordinates for Channel 244B at Fort Bragg are 39–27–53 and 123–45–27. With this action, the proceeding is terminated.

EFFECTIVE DATE: December 2, 1991.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–599, adopted October 4, 1991, and released October 16, 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, Downtown Copy Center, (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

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 California, is amended by removing Channel 244A and adding Channel 244B at Fort Bragg.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 91–25357 Filed 10–21–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–472; RM–7342; RM–7570]

Radio Broadcasting Services; Rock Valley and Sibley, IA, Pipestone, MN, Blair and Nebraska City, NE, and Sioux Falls and Vermillion, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Wallace Christensen, substitutes Channel 254C for Channel 254C1 at Pipestone, Minnesota, and modifies his license for Station KISD to specify the higher powered channel. At the request of Christensen Broadcast Group, Inc., the Commission substitutes Channel 292C2 for Channel 292A at Vermillion, South Dakota, and modifies its license for Station KVHT to specify operation on the higher powered channel (RM–7342). At the request of Sunrise Broadcasting Corp., the Commission substitutes Channel 249C1 for Channel 249C2 at Nebraska City, Nebraska, and modifies its license for Station KNCY–FM to specify operation on the higher powered channel (RM–7570). See 55 FR 45821, October 31, 1990. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 2, 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. 90–472, adopted October 3, 1991, and released October 16, 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, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Channel 249C1 can be allotted to Nebraska City, Nebraska, in compliance with the Commission's minimum distance separation requirements with a site restriction of 43.2 kilometers (26.8 miles) northwest to avoid short-spacings to Station KLAL, Channel 249A, Lamoni, Iowa, and Station KSEZ, Channel 250C1, Sioux City, Iowa, at coordinates 40–53–00 and 96–17–30. Channel 292C2 can be allotted to Vermillion, South Dakota, with a site restriction of 22 kilometers (13.7 miles) north to avoid short-spacings to Station KBWH, Channel 292A, Blair, Nebraska, and to unoccupied but applied for Channel 295A at Rock Valley, Iowa, at coordinates 42–58–40 and 96–54–54. Channel 254C can be allotted to Pipestone, Minnesota, at Station KISD's licensed transmitter site, at coordinates 43–53–01 and 95–55–44.

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 Minnesota, is amended by removing Channel 254C1 and adding Channel 254C at Pipestone.

3. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by removing Channel 249C2 and adding Channel 249C1 at Nebraska City.

4. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by removing Channel 292A and adding Channel 292C2 at Vermillion.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 91–25358 Filed 10–21–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–595; RM–7539]

Radio Broadcasting Services; North East, Pennsylvania and Olean, New York

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Rambaldo Communications, Inc., substitutes Channel 265B1 for Channel 265A at North East, Pennsylvania, and modifies the license of Station WRKT–FM to specify operation on the higher class channel. To accommodate the North East allotment, Channel 268A is substituted for Channel 265A at Olean, New York, and the license of Station WMXO is modified to specify operation on the alternate Class A channel. See 55 FR 51134, December 12, 1990 and Supplementary Information, *infra*. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 2, 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. 90–595, adopted October 7, 1991, and released October 16 ,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, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Channel 265B1 can be allotted to North East in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, with a site restriction of 2.9 kilometers (1.8 miles) east to avoid a short-spacing to Stations WZPR, Channel 262B, Meadville, Pennsylvania, and WHOT–FM, Channel 266B, Youngstown, Ohio. The site restriction imposed on Channel 265B1 at North East does not obviate the short-spacing to unoccupied and unapplied for Channel 266A at Crystal Beach, Ontario, Canada. However, we confirmed that Station WRKT–FM could limit its power in the direction of Crystal Beach to avoid prohibited overlap of the Crystal Beach 54 dBu protected contour. The coordinates for Channel 265B1 at North East are North Latitude 42–12–30 and West Longitude 79–48–00. Channel 268A can be allotted to Olean at Station WMXO's licensed transmitter site, at coordinates North Latitude 42–06–24 and West Longitude 78–23–28. Canadian concurrence in both allotments has been received because Olean and North East are each located within 320 kilometers (200 miles) of the U.S.-Canadian border.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Channel 265A and adding Channel 268A at Olean.

3. Section 73.202(b), the Table of FM Allotments under Pennsylvania, is amended by removing Channel 265A and adding Channel 265B1 at North East.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 91–25356 Filed 10–21–91; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 56, No. 204
Tuesday, October 22, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 530, 531, 550, and 575

RIN 3206-AE23

Special Pay Adjustments for Law Enforcement Officers in Selected Cities

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations on the special pay adjustments for law enforcement officers authorized by section 404 of the Federal Employees Pay Comparability Act of 1990 (FEPCA). The proposed regulations establish rules for applying these special pay adjustments to law enforcement officers under the General Schedule or the Senior Executive Service in the following designated Consolidated or Metropolitan Statistical Areas (CMSA's or MSA's): Boston-Lawrence-Salem, MA-NH; Chicago-Gary-Lake County, IL-IN-WI; Los Angeles-Anaheim-Riverside, CA; New York-Northern New Jersey-Long Island, NY-NJ-CT; Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD; San Francisco-Oakland-San Jose, CA; San Diego, CA; and Washington, DC-MD-VA.

DATES: Comments must be received on or before November 21, 1991.

ADDRESS: Written comments may be sent or delivered to Barbara L. Fiss, Assistant Director for Pay Policy and Programs, Personnel Systems and Oversight Group, Office of Personnel Management, Room 7H30, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Robert T. Gatewood, (202) 606-2858 or (FTS) 266-2858.

SUPPLEMENTARY INFORMATION: Section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509, November 5, 1990) establishes special pay adjustments of 4, 8, or 16 percent of basic pay for a law enforcement officer whose official duty station is in one of eight designated areas. These adjustments will become effective on the first day of the first pay period beginning on or after January 1, 1992. The law gives OPM authority to regulate the implementation of these special pay adjustments under section 404 because these adjustments must be administered in the same manner as locality-based comparability payments under section 5304 of title 5, United States Code. A special pay adjustment under section 404 is paid in addition to the special rates for law enforcement officers established under section 403. However, the law provides that a special pay adjustment under section 404 must be "reduced" by the amount of any applicable interim geographic adjustment under section 302 of FEPCA; any applicable locality-based comparability payment under section 5304 of title 5, United States Code; and any applicable special rate of pay under section 5305 of title 5, United States Code.

The eight areas, defined as Consolidated Metropolitan Statistical Areas (CMSA's) or Metropolitan Statistical Areas (MSA's), are Boston-Lawrence-Salem, MA-NH; Chicago-Gary-Lake County, IL-IN-WI; Los Angeles-Anaheim-Riverside, CA; New York-Northern New Jersey-Long Island, NY-NJ-CT; Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD; San Francisco-Oakland-San Jose, CA; San Diego, CA; and Washington, DC-MD-VA. As of the date of publication of these proposed regulations, these CMSA's or MSA's are defined as set forth below.

The Boston-Lawrence-Salem, MA-NH CMSA consists of Essex and Suffolk counties in Massachusetts; all of Middlesex County, Massachusetts, except the town of Ashby; all of Norfolk County, Massachusetts, except the town of Planeville; in Bristol County, Massachusetts, the towns of Mansfield, Norton, Raynham, and Easton; in Plymouth County, Massachusetts, the towns of Abington, Bridgewater, Carver, Duxbury, East Bridgewater, Halifax, Hanover, Hanson, Hingham, Hull, Kingston, Lakeville, Marshfield, Middleborough, Norwell, Pembroke, Plymouth, Plympton, Rockland, Scituate, West Bridgewater, and Whitman, and the city of Brockton; in Worcester County, Massachusetts, the towns of Berlin, Bolton, Harvard, Hopedale, Lancaster, Mendon, Milford, Southborough, and Upton; in Rockingham County, New Hampshire, the towns of Atkinson, Brentwood, Danville, Derry, East Kingston, Hampstead, Kingston, Londonderry, Newton, Plaistow, Salem, Sandown, Seabrook, and Windham; and in Hillsborough County, New Hampshire, the towns of Amherst, Brookline, Hollis, Hudson, Litchfield, Merrimack, Milford, Mont Vernon, Pelham, and Wilton, and the city of Nashua.

The Chicago-Gary-Lake County, IL-IN-WI CMSA consists of Cook, DuPage, Grundy, Kane, Kendall, Lake, McHenry, and Will Counties in Illinois, Lake and Porter Counties in Indiana; and Kenosha County, Wisconsin.

The Los Angeles-Anaheim-Riverside, CA CMSA consists of Orange, Los Angeles, Ventura, Riverside, and San Bernardino counties.

The New York-Northern New Jersey-Long Island, NY-NJ-CT CMSA consists of Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland, Westchester, Orange, Nassau, and Suffolk Counties in New York; Bergen, Passaic, Hudson, Hunterdon, Middlesex, Somerset, Monmouth, Ocean, Essex, Morris, Sussex, and Union Counties in New Jersey; Fairfield County, Connecticut; in New Haven County, Connecticut, the towns of Beacon Falls, Oxford, and Seymour, and the cities of Ansonia, Derby, and Milford; and in Litchfield County, Connecticut, the towns of Bridgewater and New Milford.

The Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD CMSA consists of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties in Pennsylvania; Burlington, Camden, Cumberland, Gloucester, Mercer, and Salem Counties in New Jersey; New Castle County, Delaware; and Cecil County, Maryland.

The San Francisco-Oakland-San Jose, CA CMSA consists of Alameda, Contra Costa, Marin, San Francisco, San Mateo, Santa Clara, Santa Cruz, Sonoma, Napa, and Solano Counties.

The San Diego, CA MSA consists of San Diego County.

The Washington DC-MD-VA MSA consists of the District of Columbia; Calvert, Charles, Federick, Montgomery, and Prince Georges Counties in Maryland; Arlington, Fairfax, Loudoun,

Prince William, and Stafford Counties, and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park in Virginia.

The statute provides that a law enforcement officer whose post of duty is in one of the eight designated areas will be entitled to a special pay adjustment of (1) 16 percent in the Boston, Los Angeles, New York, and San Francisco CMSA's, (2) 8 percent in the San Diego MSA, and (3) 4 percent in the Chicago and Philadelphia CMSA's and the Washington, DC, MSA. Under the proposed regulations, the special pay adjustment is calculated as a percentage of any applicable special rate for law enforcement officers established under section 403 of FEPCA and is added to that rate to determine the "special law enforcement adjusted rate of pay."

To carry out the purpose of the "reductions" required by section 404 of FEPCA, the proposed regulations provide that a law enforcement officer shall receive the *greater* of (1) the special law enforcement adjusted rate of pay; (2) the "adjusted annual rate of pay" calculated under the interim regulations on interim geographic adjustments (5 CFR Part 531, Subpart A)—for law enforcement officers in the New York, Los Angeles, and San Francisco CMSA's only; or (3) any applicable special rate established under 5 U.S.C. 5305. Agencies will be required to keep track of each of these entitlements to ensure that each affected employee receives the rate to which he or she is entitled.

Section 402 of FEPCA limits the payment of this special pay adjustment to law enforcement officers "to whom the provisions of chapter 51" of title 5 apply. This includes employees paid under the General Schedule, the Performance Management and Recognition System, and the Senior Executive Service who are law enforcement officers within the meaning of 5 U.S.C. 8331(20) or 8401(17). In addition, section 405 of FEPCA authorizes the Secretary of the Treasury, the Secretary of the Interior, the Secretary of State, and the Director of the Administrative Office of the United States Courts to prescribe regulations under which the purposes of section 404 will be carried out with respect to the following categories of employees: (1) Members of the United States Secret Service Uniformed Division, (2) members of the United States Park Police, (3) special agents within the Diplomatic Security Service, (4) probation officers under 18 U.S.C. 3672, and (5) pretrail services officers under 18 U S.C. 3153.

Furthermore, the statute requires that this special adjusted rate of pay be administered in the same manner as a locality-based comparability payment under 5 U.S.C. 5304. (A similar statutory requirement applies to interim geographic adjustments under section 302 of FEPCA.) Thus, the proposed rule provides that special pay adjustments for law enforcement officers will be considered basic pay for purposes of computing retirement deductions and benefits; life insurance premiums and benefits; premium pay, including annual premium pay for administratively uncontrollable overtime (AUO) work; severance pay; and advances in pay. The special pay adjustment is also considered a continuing payment for purposes of determining eligibility for a supervisory differential for General Schedule supervisors of non-General Schedule subordinates under 5 CFR Part 575. For all other pay administration purposes (including grade and pay retention, promotion, and use of "highest previous rate" in movements within, into, or out of a "special pay adjustment area"), a law enforcement officer's rate of basic pay is the greater of (1) the scheduled rate of basic pay for his or her grade or pay level and step (or relative position in the rate range), (2) any applicable special salary rate under 5 U.S.C. 5305 or similar provision of law, or (3) any applicable special salary rate under section 403 of FEPCA.

The proposed regulations prescribe methods for deriving annual, hourly, biweekly, and daily adjusted rates of pay consistent with the requirements for computing rates of basic pay under 5 U.S.C. 5504. In addition, the amendatory instructions for the proposed rule numbered 2, 3, 5, and 11 through 23 would revise related sections of OPM's regulations to incorporate references to special rates of pay for law enforcement officers under section 403 of FEPCA and/or special pay adjustments for law enforcement officers under section 404, as appropriate.

Finally, OPM is proposing some technical changes in the regulations governing the conversion of General Schedule rates of basic pay at the time of an annual pay adjustment to incorporate changes made by FEPCA.

E.O. 12291, Federal Regulations

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, since it applies only to Federal employees and agencies.

List of Subjects

5 CFR Parts 530, 531, and 575

Government employees, Wages, Administrative practice and procedure.

5 CFR Part 550

Government employees, Wages, Civil defense, Administrative practice and procedure.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is proposing to amend Parts 530, 531, 550, and 575 of Title 5 of the Code of Federal Regulations as follows:

PART 530—PAY RATES AND SYSTEMS (GENERAL)

1. The authority citation for Part 530 is revised to read as follows:

Authority: 5 U.S.C. 5305; E.O. 12748; Subpart B also issued under sec. 302(c) and 404(c) of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462 and 1466, respectively.

2. In § 530.202, paragraph (2) of the definition of "aggregate compensation" and the definition of "continuing payment" are revised to read as follows:

§ 530.202 Definitions.

* * * * *

Aggregate compensation means the total of—

* * * * *

(2) Locality-based comparability payments under 5 U.S.C. 5304 or interim geographic adjustments or special pay adjustments for law enforcement officers under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively;

* * * * *

Continuing payment means basic pay and any other form of pay included in an employee's aggregate compensation that is paid in the same manner and at the same time as basic pay, including, but not limited to, locality-based comparability payments, interim geographic adjustments, special pay adjustments for law enforcement officers, retention allowances, supervisory differentials, cost-of-living allowances, remote worksite allowances, and physicians comparability allowances.

* * * * *

3. In § 530.203, paragraph (f) is revised to read as follows:

§ 530.203 Administration of aggregate limitation on pay.

* * * * *

(f) If the annual rate of all nondiscretionary continuing payments to which an employee is entitled and any previously authorized physicians comparability allowance at any time exceeds the rate then in effect for level I of the Executive Schedule, the agency shall make such payments in the following order: basic pay; locality-based comparability payments, interim geographic adjustments, or special pay adjustments for law enforcement officers; other nondiscretionary continuing payments in chronological order of their authorization; and any previously authorized physicians comparability allowance. Any portion of a nondiscretionary continuing payment or physicians comparability allowance not payable under this paragraph, as well as any other discretionary continuing payment authorized before the date on which this paragraph became applicable to the employee, shall become available for payment as provided in § 530.204 of this part.

PART 531—PAY UNDER THE GENERAL SCHEDULE

4. The authority citation for Part 531 is revised to read as follows:

Authority: 5 U.S.C. 5115, 5338, and chapter 54; E.O. 12748; subpart A issued under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462, and E.O. 12736; subpart B also issued under 5 U.S.C. 5303(g), 5333, 5402, and 7701(b)(2); subpart C also issued under section 404 of Public Law 101–509, 104 Stat. 1466, and E.O. 12748; subpart D also issued under 5 U.S.C. 7701(b)(2); subpart E also issued under 5 U.S.C. 5336.

5. In § 531.101, paragraph (a) of the definition of "scheduled annual rate of pay" is revised to read as follows:

§ 531.101 Definitions.

* * * * *

Scheduled annual rate of pay means—

(a) The General Schedule rate of basic pay (or a nationwide or worldwide special salary rate under part 530 of this chapter or a special rate for law enforcment officers under section 403 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), if applicable) for the employee's grade and step (or relative position in the rate range), exclusive of additional pay of any kind;

* * * * *

6. In § 531.205, the heading, paragraph (a) introductory text, and paragraph (b) are revised to read as follows:

§ 531.205 Pay schedule conversion rules at the time of an annual pay adjustment under 5 U.S.C. 5303.

(a) On the effective date of a pay adjustment under 5 U.S.C. 5303, the rate of basic pay of an employee subject to the General Schedule shall be initially adjusted, except as provided in paragraph (b) of this section, as follows:

* * * * *

(b) Rates of basic pay authorized under section 5305 of title 5, United States Code, paid to an employee subject to the General Schedule shall be adjusted by reason of a pay adjustment under 5 U.S.C. 5303 in accordance with § 530.307 of this part.

7. Subpart C is added to read as follows:

Subpart C—Special Pay Adjustments for Law Enforcement Officers

Sec.

531.301 Definitions.
531.302 Determining special law enforcement adjusted rates of pay.
531.303 Computation of hourly, daily, weekly, and biweekly adjusted rates of pay.
531.304 Administration of special law enforcement adjusted rates of pay.
531.305 Reports.
531.306 Effect of special pay adjustment for law enforcement officers on retention payments under FBI demonstration project.

Subpart C—Special Pay Adjustments for Law Enforcement Officers

§ 531.301 Definitions.

In this subpart:

Law enforcement officer means a law enforcement officer within the meaning of section 8331(20) or section 8401(17) of title 5, United States Code, with respect to whom the provisions of chapter 51 of such title apply, including members of the Senior Executive Service.

Official duty station means the duty station for a law enforcement officer's position of record as indicated on his or her most recent notification of personnel action.

Scheduled annual rate of pay means—

(a) The rate of basic pay for a law enforcement officer's grade or pay level and step (or relative position in the rate range), including special rates for law enforcement officers under section 403 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), but not including special salary rates established under 5 U.S.C. 5305;

(b) For a law enforcement officer covered by the Performance Management and Recognition System who is receiving a special salary rate under 5 U.S.C. 5305 or similar provision of law (other than section 403 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509)), the rate of pay resulting from the following computation—

(1) Using the special salary rate schedule established under 5 U.S.C. 5305, subtract the dollar amount for step 1 of the law enforcement officer's grade from the dollar amount for the law enforcement officer's special salary rate; and

(2) Add the result of paragraph (b)(1) to the dollar amount for step 1 of the employee's grade on the General Schedule; or

(c) The retained rate of pay under Part 536 of this chapter, where applicable, exclusive of additional pay of any kind.

Special law enforcement adjusted rate of pay means an employee's scheduled annual rate of pay multiplied by the factor listed in § 531.302 of this part for the special pay adjustment area in which the employee's official duty station is located.

Special pay adjustment area means any of the following Consolidated Metropolitan Statistical Areas (CMSA's) or Metropolitan Statistical Areas (MSA's), as defined by the Office of Management and Budget (OMB):

(a) Boston-Lawrence-Salem, MA–NH;

(b) Chicago-Gary-Lake County, IL–IN–WI;

(c) Los Angeles-Anaheim-Riverside, CA;

(d) New York-Northern New Jersey-Long Island, NY–NJ–CT;

(e) Philadelphia-Wilmington-Trenton, PA–NJ–DE–MD;

(f) San Francisco-Oakland-San Jose, CA;

(g) San Diego, CA;

(h) Washington, DC–MD–VA.

§ 531.302 Determining special law enforcement adjusted rates of pay.

To determine the special law enforcement adjusted rate of pay, the scheduled annual rate of pay for a law enforcement officer whose official duty station is in one of the special pay adjustment areas listed below shall be multiplied by the factor shown for that area:

Special Pay Adjustment Area	Factor
Boston—Lawrence—Salem, MA–NH	1.16
Chicago—Gary—Lake County, IL–IN–WI	1.04
Los Angeles—Anaheim—Riverside, CA	1.16
New York—Northern New Jersey—Long Island, NY–NJ–CT	1.16
Philadelphia—Wilmington—Trenton, PA–NJ–DE–MD	1.04
San Francisco—Oakland—San Jose, CA	16
San Diego, CA	1.08
Washington, DC–MD–VA	1.04

§ 531.303 Computation of hourly, daily, weekly, and biweekly adjusted rates of pay.

When it is necessary to convert the special law enforcement adjusted rate of pay to an hourly, daily, weekly, or biweekly rate, the following methods apply:

(a) To derive an hourly rate, divide the adjusted annual rate of pay by 2,087 and round to the nearest cent, counting one-half cent and over as a whole cent;

(b) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required by the employee's basic daily tour of duty;

(c) To derive a weekly or biweekly rate, multiply the hourly rate by 40 or 80, as the case may be.

§ 531.304 Administration of special law enforcement adjusted rates of pay.

(a) A law enforcement officer shall receive the greater of—

(1) The special law enforcement adjusted rate of pay;

(2) The "adjusted annual rate of pay" under subpart A of this part (Interim Geographic Adjustment) for the employee's grade and step (or relative position in the rate range), if applicable; or

(3) Any applicable special salary rate established under 5 U.S.C. 5305 for the employee's grade and step (or relative position in the rate range).

(b) A special law enforcement adjusted rate of pay is considered basic pay for purposes of computing—

(1) Retirement deductions and benefits under parts 831, 841, 842, 843, and 844 of this chapter;

(2) Life insurance premiums and benefits under parts 870, 871, 872, and 873 of this chapter;

(3) Premium pay under subparts A and I of part 550 of this chapter (including the computation of limitations on premium pay under 5 U.S.C. 5547, overtime pay under 5 U.S.C. 5542(a), and compensatory time off under 5 U.S.C. 5543);

(4) Severance pay under subpart G of part 550 of this chapter; and

(5) Advances in pay under subpart B of part 550 of this chapter.

(c) When an employee's official duty station is changed from a location not in a special pay adjustment area to a location in a special pay adjustment area, payment of the special law enforcement adjusted rate of pay begins on the effective date of the change in official duty station.

(d) A special law enforcement adjusted rate of pay is paid only for those hours for which a law enforcement officer is in a pay status.

(e) A special law enforcement adjusted rate of pay shall be adjusted as of the effective date of any change in the applicable scheduled annual rate of pay.

(f) Except as provided in paragraph (g) of this section, entitlement to a special law enforcement adjusted rate of pay under this subpart terminates on the date—

(1) An employee's official duty station is no longer located in a special pay adjustment area;

(2) An employee moves to a position not covered by this subpart;

(3) An employee separates from Federal service;

(4) An employee's "adjusted annual rate of pay" under Subpart A of this part exceeds his or her special law enforcement adjusted rate of pay; or

(5) An employee's special salary rate under 5 U.S.C. 5305 exceeds his or her special law enforcement adjusted rate of pay.

(g) In the event of a change in the geographic area covered by a CMSA or MSA described in § 531.301 of this chapter, the effective date of a change in an employee's entitlement to a special law enforcement adjusted rate of pay under this subpart shall be the first day of the first pay period beginning on or after the date on which a change in the definition of the CMSA or MSA is made effective.

(h) Payment of, or an increase in, a special law enforcement adjusted rate of pay is not an equivalent increase in pay within the meaning of 5 U.S.C. 5335.

(i) A special law enforcement adjusted rate of pay is included in an employee's "total remuneration," as defined in § 551.511(b) of this chapter, and "straight time rate of pay," as defined in § 551.512(b) of this chapter, for the purpose of computations under the Fair Labor Standards Act of 1938, as amended.

(j) Termination of a special law enforcement adjusted rate of pay under paragraph (f) of this section is not an adverse action for the purpose of subpart D of Part 752 of this chapter.

§ 531.305 Reports.

The Office of Personnel Management may require agencies to report pertinent information concerning the administration of payments under this subpart.

§ 531.306 Effect of special pay adjustments for law enforcement officers on retention payments under FBI demonstration project.

As required by section 406 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–109), a retention payment payable to an employee of the New York Field Division of the Federal Bureau of Investigation under section 601(a)(2) of Pub. L. 100–453, as amended, shall be reduced by the amount of any special pay adjustment for law enforcement officers payable to that employee under this subpart. For the purpose of applying this section, the amount of the special pay adjustment for law enforcement officers shall be determined by subtracting the employee's scheduled annual rate of pay from his or her special law enforcement adjusted rate of pay.

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

8. The authority citation for subpart A of part 550 is revised to read as follows:

Authority: 5 U.S.C. 5548 and 6101(c); sec. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462 and 1466, respectively; E.O. 12748.

9. In § 550.103, paragraph (j) is revised to read as follows:

§ 550.103 Definitions.

* * * * *

(j) "Rate of basic pay" means the rate of pay fixed by law or administrative action for the position held by an employee, including any applicable interim geographic adjustment or special pay adjustment for law enforcement officers under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively, or locality-based comparability payment under 5 U.S.C. 5304, before any deductions and exclusive of additional pay of any other kind.

* * * * *

10. In § 550.107, paragraph (a) is revised to read as follows:

§ 550.107 Special maximum earnings limitation for law enforcement officers.

* * * * *

(a) 150 percent of the minimum rate for GS–15, including a locality-based comparability payment under 5 U.S.C. 5304 or an interim geographic adjustment or special law enforcement adjustment under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively, and any special salary rate established under 5 U.S.C. 5305, rounded to the nearest whole cent, counting one-half cent and over as a whole cent; or

* * * * *

11. In § 550.111, paragraph (d)(2) is revised to read as follows:

§ 550.111 Authorization of overtime pay.

* * * * *

(d) * * *

(2) Performed by an employee, when the employee's basic pay exceeds the minimum rate for GS–10 (including any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; a locality-based comparability payment under 5 U.S.C. 5304; and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law) or when the employee is engaged in professional or technical engineering or scientific activities. For purposes of this section and section 5542(a) of title 5, United States Code, an employee is engaged in professional or technical engineering or scientific activities when he or she is assigned to perform the duties of a professional or support technical position in the physical, mathematical, natural, medical, or social sciences or engineering or architecture.

* * * * *

12. In § 550.113, paragraph (a) is revised to read as follows:

§ 550.113 Computation of overtime pay.

(a) For each employee whose rate of basic pay does not exceed the minimum rate for GS–10 (including any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; a locality-based comparability payment under 5 U.S.C. 5304; and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law), the overtime hourly rate is 1½ times his or her hourly rate of basic pay.

* * * * *

13. In § 550.114, paragraph (c) is revised to read as follows:

§ 550.114 Compensatory time off.

* * * * *

(c) The head of an agency may provide that an employee whose rate of basic pay exceeds the maximum rate for GS–10 (including any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; a locality-based comparability payment under 5 U.S.C. 5304; and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law) shall be compensated for irregular or occasional overtime work with an equivalent amount of compensatory time off from the employee's tour of duty instead of payment under § 550.113 of this part.

* * * * *

14. § 550.151 is revised to read as follows:

§ 550.551 Authorization of premium pay on an annual basis.

An agency may pay premium pay on an annual basis, instead of other premium pay prescribed in this subpart (except premium pay for regular overtime work, and work at night, on Sundays, and on holidays), to an employee in a position in which the hours of duty cannot be controlled administratively and which requires substantial amounts of irregular or occasional overtime work, with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty. Premium pay under this section is determined as an appropriate percentage, not less than 10 percent nor more than 25 percent, of the employee's rate of basic pay (including any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; a locality-based comparability payment under 5 U.S.C. 5304; and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law).

15. In § 550.154, paragraph (a) is revised to read as follows:

§ 550.154 Rates of premium pay payable under § 550.151.

(a) An agency may pay the premium pay on an annual basis referred to in § 550.151 to an employee who meets the requirements of that section, at one of the following percentages of the employee's rate of basic pay (including any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; a locality-based comparability payment under 5 U.S.C. 5304; and any applicable special rate of pay under 5 U.S.C. 5305 or similar provision of law):

* * * * *

Subpart B—Advances in Pay

16. The authority citation for subpart B is revised to read as follows:

Authority: 5 U.S.C. 5524a; sec. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462 and 1466, respectively; E.O. 12748.

17. In § 550.202, the definition of "rate of basic pay" is revised to read as follows:

§ 550.202 Definitions.

* * * * *

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee, including annual premium pay for standby duty under 5 U.S.C. 5545(1); night differential for prevailing rate employees under 5 U.S.C. 5343(f); a special rate established under 5 U.S.C. 5305, § 532.231 of this subchapter, or other legal authority; and locality-based comparability payments under 5 U.S.C. 5304; or any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively but not including additional pay of any other kind.

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

18. The authority citation for Part 575 is revised to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 5753, 5754, and 5755; sec. 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat 1466; E.O. 12748.

19. In § 575.103, the definition of "rate of basic pay" is revised to read as follows:

§ 575.103 Definitions.

* * * * *

Rate of basic pay means the rate of pay fixed by law or administrative action for the position to which the employee is or will be newly appointed, before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304; or interim geographic adjustments, special rates of pay for law enforcement officers, or special pay adjustments for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively.

* * * * *

20. In § 575.203, the definition of "rate of basic pay" is revised to read as follows:

§ 575.203 Definitions.

* * * * *

Rate of basic pay means the rate of pay fixed by law or administrative action for the position to which the employee is being relocated, before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304; or interim geographic adjustments, special rates of pay for law enforcement officers, or special pay adjustments for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively.

* * * * *

21. In § 575.303, the definition of "rate of basic pay" is revised to read as follows:

§ 575.303 Definitions.

* * * * *

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee, before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304; or interim geographic adjustments, special rates of pay for law enforcement officers, or special pay adjustments for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively.

22. In § 575.403, the definition of "rate of basic pay" is revised to read as follows:

§ 575.403 Definitions.

* * * * *

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee, before deductions and exclusive of additional pay of any kind, such as locality-based comparability payment under 5 U.S.C. 5304; or interim geographic adjustments, special rates of pay for law enforcement officers, or special pay adjustments for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively.

* * * * *

23. In § 575.405, paragraph (c)(2) is revised to read as follows:

§ 575.405 Calculation and payment of supervisory differentials.

* * * * *

(c) * * *

(2) A locality-based comparability payment under 5 U.S.C. 5305; or interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively;

* * * * *

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BILLING CODE 6325–01–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 51

Concession Contracts and Permits

AGENCY: National Park Service, Interior.

ACTION: Extension of Comment Period on Proposed Regulations.

SUMMARY: In the **Federal Register** of August 23, 1991 (56 FR 41894), the National Park Service proposed to amend regulations regarding National Park Service concession contracts. The proposed rulemaking will amend 36 CFR part 51 which describes National Park Service procedures for award of concession contracts and permits under the authority of 16 U.S.C. 3 and 20, *et seq.* to clarify certain of the original intentions of the regulations and to make more competitive, within the scope of existing law, the renewal of concession contracts and permits.

As originally announced, public comments were to be accepted through October 22, 1991. This notice extends the comment period by an additional thirty days, until November 22, 1991.

DATES: Written comments on the proposed rulemaking will be accepted through November 22, 1991.

ADDRESSES: Comments should be addressed to: Director, National Park Service, Washington, DC 20013–7127.

FOR FURTHER INFORMATION CONTACT: Lee Davis, Chief, Concessions Division, National Park Service, Washington, DC 20013–7127. Telephone (202) 343–3784.

John H. Davis,

Associate Director Operations.

[FR Doc. 91–25432 Filed 10–21–91; 8:45 am]
BILLING CODE 4310–70–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OAR-FRL–4022–9]

State Implementation Plans for Nonattainment Areas for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of finding of failure to submit a required state implementation plan and proposed rule.

SUMMARY: The EPA gives notice that it is making a finding, under section 179(a)(1) of the Clean Air Act (CAA), as amended, for each State listed in Table A, that the State has failed to submit an implementation plan or plan element required under the provisions of the CAA. This notice addresses the requirement under section 182(a)(2)(A) that, within 6 months of the classification of an ozone nonattainment area, States submit certain corrections to volatile organic compounds (VOC) regulations for specific ozone nonattainment areas. This requirement applies to areas which were designated nonattainment for ozone under the pre-amended CAA, which retained that designation as of enactment of the 1990 Amendments to the CAA, and which are now classified as at least marginal. Regulations should have been corrected and submitted to EPA under this provision by May 15, 1991. This notice continues the process initiated in June 1991 when letters were sent by the EPA Regional Offices to 11 States and the District of Columbia notifying each of its failure to make a submittal. Today's notice consolidates these individual regionally-applicable actions for the purpose of providing an opportunity for comment.

Today's finding triggers the 18–month time clock for mandatory application of sanctions under section 179(a), the Administrator's discretionary authority to impose sanctions under section 110(m), and the 2-year time clock for promulgation of Federal VOC regulations for these areas as required by section 110(c)(1).

DATES: Comments on this notice must be submitted before November 21, 1991.

ADDRESSES: Commenters should submit two copies of written comments on this notice to the attention of Air Docket No. A–91–54, U.S. Environmental Protection Agency (LE–131), 401 M Street SW., Washington, DC 20460, and one copy to the Regional Office for the State to which the comment pertains. Comments

sent to a Regional Office should be sent to the appropriate address listed below:

Susan Studlien, Chief, State Air Programs Branch, EPA Region I (APB–2311), JFK Federal Building, Boston, Massachusetts 02203–2211, (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), 617–565–3221.

William S. Baker, Chief, Air Programs Branch, EPA Region II (Room 1005), 26 Federal Plaza, New York, New York 10278, (New Jersey, New York, Puerto Rico, Virgin Islands), 212–264–2517.

Marcia Spink, Chief, Air Programs Branch, EPA Region III–(3AM10), 841 Chestnut Building, Philadelphia, Pennsylvania 19107, (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia), 215–597–9075.

Thomas J. Hansen, Acting Chief, Air Programs Branch, EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, (Alabama, Georgia, Florida, Kentucky, Mississippi, North Carolina, Tennessee, South Carolina), 404–374–2864.

Steven Rosenthal, Regional VOC Expert, Air & Radiation Division, EPA Region V (5 AR), 230 South Dearborn Street, Chicago, Illinois 60604, (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), 312–886–6052.

Gerald Fontenot, Chief, Air Programs Branch, EPA Region VI (6T-A), Allied Bank Tower, 1445 Ross Avenue, Dallas, Texas 75202–2733, (Arkansas, Louisiana, Oklahoma, New Mexico, Texas), 214–655–7204.

Gale Wright, Chief, Air Programs Branch, EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (Iowa, Kansas, Missouri, Nebraska), 913–551–7020.

Douglas M. Skie, Chief, Air Programs Branch, EPA Region VIII (8AT-AP), 999 18th Street, Suite 500, Denver, Colorado 80202–2405, (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), 303–293–1750.

David L. Calkins, Chief, Air Programs Branch, EPA Region IX (A–2), 75 Hawthorne Street, San Francisco, California 94105, (Arizona, California, Hawaii, American Samoa, Northern Mariana Islands), 415–744–1210.

George Abel, Chief, Air Programs Branch, EPA Region X (AT–092), 1200 Sixth Avenue, Seattle, Washington 98101, (Alaska, Idaho, Oregon, Washington), 206–442–4166.

Copies of the letters by which EPA notified each State of its failure to submit a required plan or plan element, guidance issued pursuant to section 108, and other documentation related to these findings are located in Docket No. A–91–54, U.S. Environmental Protection Agency, Air Docket, room M–1500, Waterside Mall, 401 M Street SW., Washington, DC 20460. Materials relevant to this rulemaking may be inspected during the hours from 8:30 a.m. to 12 noon and from 1:30 p.m. to 3 p.m. Monday through Friday. A reasonable fee may be charged for copies. A docket for each area for which EPA is making a finding is contained in the EPA Regional Office of the Region in which the area is located. These dockets contain only the information relevant to the States in the particular Region.

FOR FURTHER INFORMATION CONTACT: General questions concerning this notice should be addressed to Laurel J. Schultz, Air Quality Management Division (MD–15), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–5511 or FTS 629–5511. For questions related to a specific area, please contact the appropriate Regional Office listed above.

SUPPLEMENTARY INFORMATION:

I. Background

The 1970 Clean Air Act required States to adopt State implementation plans (SIP's) providing for attainment of the national ambient air quality standards (NAAQS) within certain timeframes (Pub. L. 91–604, 84 Stat. 1676). In many areas of the country, the initial SIP's developed in the early 1970's failed to bring about timely attainment.

In 1977, Congress amended the Act to address the problem of continuing nonattainment of the NAAQS (Pub. L. 95–95, 91 Stat. 685, 42 U.S.C. 740 et seq. (1978)). New section 107(d) required each State to submit to EPA for approval a list of all areas to be designated as attaining the NAAQS (attainment areas), not attaining the NAAQS (nonattainment areas), or unclassifiable due to lack of adequate data (unclassifiable areas). Section 172(a)(1) of Part D required each State to develop, for each nonattainment area, a SIP that would provide for attainment of the NAAQS as expeditiously as practicable but not later than December 31, 1982. Areas that demonstrated that it would be impossible to attain either the ozone or carbon monoxide NAAQS by that date, despite the implementation of all reasonably available control measures, were allowed to request an extension. The new attainment date was to be a date demonstrated as being the date that was as expeditious as practicable but in no case later than December 31, 1987. The 1977 Amendments retained, as a remedial mechanism, the Administrator's authority under section 110(a)(2)(H) to find a SIP "substantially inadequate" and to call for a SIP revision (i.e., to issue a SIP call).

II. Calls for SIP Revisions

In early May 1988, EPA released 1987 air quality data which established the degree to which areas throughout the Nation attained, or failed to attain, the ozone NAAQS and issued SIP calls for areas that failed to attain. On July 27, 1989, EPA identified additional areas that failed to attain the NAAQS based on 1988 air quality data. On September 7, 1988, at 53 FR 34500, and on July 30, 1990, at 55 FR 30973, EPA gave notice that these SIP calls had been made. During that same time period, EPA also announced the availability of certain guidance that the Agency had issued under sections 108 and 172(b) on correcting deficiencies in VOC reasonably available control technology (RACT) regulations (see e.g., Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, May 25, 1988).

The SIP call letters, which were sent to Governors and State Air Pollution Control Directors, requested that States respond to the SIP calls in two phases. As part of the first phase, States were asked to upgrade SIP's to correct discrepancies between EPA's existing guidance under section 108 and part D (related to RACT for VOC emissions) and the measures currently in part D SIP's, and adopt control measures to satisfy any commitments in the part D SIP's to adopt RACT measures.

III. 1990 Clean Air Act Amendments

In 1990, Congress again amended the Act to address, among other things, continued nonattainment of the ozone NAAQS (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C., 7401–7671q (1991)). The Amendments divide ozone nonattainment areas into five classifications based on air quality design value and establish specific requirements, including new attainment dates, for each classification (see sections 107(d)(1)(C) and 181).

Section 182(a)(2)(A) of the Amendments requires States with existing areas designated nonattainment for ozone and classified as at least marginal, to submit, within 6 months of their classification under section 181(a), revisions to the SIP that correct or add requirements concerning RACT. The RACT correction requirement concerns RACT that was required for ozone nonattainment areas under section 172(b) of the pre-amended CAA, as this requirement was interpreted in guidance

issued by the Administrator under section 108. Only those areas designated nonattainment under the pre-amended law (which were the only areas covered by the section 172(b) RACT requirements under the 1977 Amendments) are subject to the RACT correction requirement. Under section 107(d)(1)(C), areas designated nonattainment under the prior law were again designated nonattainment by operation of law on the date of enactment, and were classified by operation of law under section 181(a) on that date.

Since the areas discussed above were designated and classified upon enactment, RACT corrections for these areas were due within 6 months from the date of enactment (i.e., by May 15, 1991). The States were required under this section to adopt RACT for various types of sources, as interpreted by EPA's established guidance under sections 108 and 172(b) concerning RACT. Guidance issued by the Administrator under section 108 is contained in the docket for this notice. In addition, that guidance was summarized in enclosures to the 1988 and 1989 letters to the State Air Pollution Control Directors. These letters are also contained in the docket for this notice.

The 1990 Amendments also establish specific consequences if a State fails to meet certain requirements of the CAA. Of particular relevance here is section 179(a), the mandatory sanctions provision. Section 179(a) sets forth four findings on which application of a sanction is based. The first finding, that a State has failed to submit a plan or one or more elements of a plan required under the CAA, is the finding relevant to this rulemaking. Today, EPA is finding that nine States and the District of Columbia have not submitted a required element of their SIP's. Under section 179(a), the Administrator must impose one sanction, under section 179(b), 18 months after the finding unless EPA finds within that 18-month period a submittal has been made. If the State still has failed to make the submittal after 24 months, then EPA must impose both sanctions under section 179(b). Moreover, the Administrator has the discretion to apply sanctions under section 110(m) once he has made a finding under section 179(a). Section 110(c)(1) has also been amended to require that the Administrator promulgate a Federal implementation plan (FIP) within 2 years after a finding of failure to submit a required plan (or plan element).

IV. Current Status of Rule Corrections

The EPA has been tracking the States' progress in making corrections to regulations since the 1988 SIP calls. In June 1991, EPA sent letters to the Governors of the States listed in Table A notifying them of those States' failure to submit a plan or plan element required under section 182(a)(2)(A) of the CAA. The progress of each State subject to the requirements of section 182(a)(2)(A) is discussed below. The States for which EPA is making a finding of failure to submit a plan or plan element are listed first with the other States following. The discussion of the deficiencies identified by the EPA Regional Offices refers to the 1988 and 1989 SIP call letters. Because of a misunderstanding among EPA and the States concerning the States' obligation to respond to the SIP calls for certain rules (particularly those related to capture efficiency test methods and deficiencies identified after enactment), EPA will not make a finding of failure to submit unless States fail to meet the schedules to which they have committed for these rules.

It should be noted that there is a distinction between States that have submitted regulations that address deficiencies but do not adequately correct them and those that have not submitted regulations. Findings are being made only for those States that failed to submit regulations to address identified deficiencies. As discussed below, a number of States have submitted regulations that address all of the deficiencies that were identified prior to November 15, 1990. However, EPA has not yet evaluated these regulations to determine whether the deficiencies were actually corrected. In the event that any of the regulations are not approvable because they do not correct the deficiencies, EPA will take action on them through notice and comment rulemaking. The sanctions and FIP processes will start upon final disapproval.

A. States for Which EPA is Making a Finding

Arizona

The EPA Region IX Office identified nine deficient regulations and one missing regulation for Maricopa County, Arizona. Arizona has submitted revised regulations to address six of the deficient regulations and has not yet submitted the one missing regulation. Region IX is in the process of reviewing the submitted regulations for consistency with EPA guidance. For the three deficient regulations that were not submitted as required under section 182(a)(2)(A), Region IX sent a letter to the Governor on June 12, 1991 indicating that Arizona failed to submit a required plan or plan element. This letter included a list of the four regulations not yet submitted in response to section 182(a)(2)(A).

California

The EPA Region IX Office identified 173 deficient regulations and 14 missing regulations in 15 California districts. California has submitted revised regulations to address 163 of the deficient regulations and all 14 of the missing regulations. Region IX is currently in the process of reviewing the submitted regulations for consistency with EPA guidance. For the 10 deficient regulations that were not submitted as required under section 182(a)(2)(A), Region IX sent a letter to the Governor on June 12, 1991 indicating that California failed to submit a required plan or plan element. This letter included a list of the 10 deficient regulations not yet submitted and the six districts responsible for these regulations. These districts include the El Dorado County Air Pollution Control District (APCD), Sacramento Metropolitan Air Quality Management District (SMAQMD), Santa Barbara County APCD, South Coast AQMD, Fresno County APCD, and Kings County APCD. Districts not affected by this letter succeeded in making all required submittals to address deficient and missing regulations. These districts include the Bay Area AQMD, Kern County APCD, Placer County APCD, San Diego County APCD, San Joaquin County APCD, Stanislaus County APCD, Tulare County APCD, Ventura County APCD, and Yolo-Solano County APCD.

District of Columbia

The EPA Region III Office identified deficiencies in six of the District of Columbia VOC regulations. The District of Columbia has not submitted any revised regulations to address the deficiencies. Because these regulations have not been submitted, Region III sent a letter to the Mayor on June 5, 1991 indicating that the District of Columbia failed to submit a required plan or plan element. This letter included a detailed list of the deficiencies that have not yet been corrected.

Kentucky

The EPA Region IV Office identified deficiencies in 15 of the Kentucky VOC regulations and 16 of the Jefferson County regulations. Kentucky has not submitted any corrections to the State regulations. However, Kentucky has

submitted a schedule for completing all of the corrections by February 28, 1992. Jefferson County has revised all of its regulations except those related to the automobile industry, and Kentucky has submitted some of these revised regulations to EPA. The remaining Jefferson County regulations which have been corrected were adopted in May 1991 and approved by the local board in June 1991. They have been forwarded to Kentucky for submittal to EPA. Because the corrections to the Kentucky and Jefferson County regulations have not been submitted, Region IV sent a letter to the Governor on June 25, 1991 indicating that Kentucky failed to submit a required plan or plan element. This letter included a detailed list of the deficiencies that have not yet been corrected.

Michigan

The EPA Region V Office identified 57 deficiencies in the Michigan VOC regulations. In addition, Michigan is missing a capture efficiency regulation and an undetermined number of major non-control techniques guidelines (CTG) regulations. While some progress has been made, Michigan has not submitted any finally-adopted revised regulations to address these deficiencies or missing regulations. Because the regulations have not been submitted to correct previously identified deficiencies, Region V sent a letter to Governor John Engler on June 11, 1991 indicating that Michigan failed to submit a required plan or plan element. This letter included a detailed list of the deficiencies that have not yet been corrected and one of the regulations that was found to be missing. Michigan has submitted an acceptable schedule to adopt a capture efficiency regulation, to correct the newly identified deficiencies, and to adopt the missing non-CTG regulations. As long as Michigan adheres to this schedule, a finding of failure to submit those regulations will not be made.

New Hampshire

The EPA Region I Office identified a number of deficiencies in the New Hampshire VOC regulations. New Hampshire has submitted revised regulations to address most of these deficiencies. Region I is currently in the process of reviewing these regulations. Prior to June 11, 1991, New Hampshire had not yet submitted revisions addressing deficiencies related to the cutback asphalt regulation and the removal of several source specific operating permits from the SIP. Because corrections to these deficiencies had not been submitted, Region I sent a letter to the Governor on June 11, 1991 indicating that New Hampshire failed to submit a required plan or plan element. Since that time, New Hampshire has held a public hearing for the removal of certain source-specific operating permits from the SIP. This completes the procedures necessary to process a SIP revision for this action. Consequently, EPA is not making a finding for this deficiency. The June 11, 1991 letter also noted that New Hampshire had not submitted a SIP revision correcting a deficiency related to capture efficiency. The EPA is not making a finding of failure to submit a plan or plan element for this because the State has committed to a schedule to correct this deficiency.

New Jersey

The EPA Region II Office identified 14 deficiencies in the New Jersey VOC regulations and 1 missing regulation. New Jersey has submitted a RACT-equivalency demonstration for the missing regulation and proposed changes for the remaining deficiencies. New Jersey has not completed the revision process. Because the identified deficiencies have not been corrected, Region II sent a letter to Governor Florio on June 24, 1991 indicating that New Jersey failed to submit a required plan or plan element. This letter included a detailed list of the deficiencies that have not yet been corrected.

New York

The EPA Region II Office identified six deficiencies in New York's VOC regulations and one missing regulation. Two of the six deficiencies are related to capture efficiency for which EPA is not making a finding of failure to submit at this time. New York submitted a RACT-equivalency demonstration in response to one other deficiency, proposed changes for a fourth, and has proposed the missing regulation. New York has also submitted a schedule for correcting the two remaining deficiencies. Because all of the deficiencies were not corrected, Region II sent a letter to Governor Cuomo on June 24, 1991 indicating that New York failed to submit a required plan or plan element. This letter included a detailed list of the deficiencies that have not yet been corrected.

Pennsylvania

The EPA Region III Office identified deficiencies in 25 of the Pennsylvania VOC regulations and 4 missing regulations. Region III also identified similar deficiencies in the Allegheny County regulations. The Pennsylvania Department of Environmental Resources (PADER) has submitted 17 revised regulations addressing some of the deficiencies in the State regulations. Region III is currently in the process of reviewing these regulations for consistency with EPA guidance. The PADER has not yet submitted revisions addressing a number of deficiencies.

Because regulations to correct all of these deficiencies have not been submitted, Region III sent a letter to the Governor on June 5, 1991 indicating that Pennsylvania failed to submit a required plan or plan element. This letter included a detailed list of the deficiencies that have not yet been corrected. Region III has negotiated a schedule with PADER for the submittal of the remaining regulatory revisions. The Allegheny County Bureau of Air Pollution Control has also committed to schedules for the submittal of the required VOC regulations to EPA through PADER. Adherence to these schedules by the Commonwealth of Pennsylvania would provide for the submittal of the revised regulations before the end of the 18-month sanctions deadline.

The EPA is not making an official finding of failure to submit regarding State submittal of correction related to capture efficiency deficiencies since PADER committed to correct these deficiencies by June 1992.

Tennessee

The EPA Region IV Office identified deficiencies in 26 of the Tennessee VOC regulations, 26 of the Memphis/Shelby County regulations, and 22 of the Nashville/Davidson County regulations. Tennessee has not submitted revised regulations for the State or Memphis/Shelby County. The Tennessee Air Pollution Control Board has approved the corrections to the State regulations, and the State has committed to submit the corrections to EPA within 2 weeks of their becoming State effective, which is expected to occur during the summer of 1991. The Memphis/Shelby County local program has committed to adopt the State regulations within 30 days of their becoming State effective. Tennessee has submitted most of the regulations for Nashville/Davidson County. The EPA approved these regulations on March 11, 1991 (56 FR 10171). The remaining corrections to the Nashville/Davidson County regulations were approved by the local board in May 1991 and forwarded to the State for submittal to EPA. These corrections were submitted to EPA on July 3, 1991 and are currently under review for consistency with EPA guidance.

Because the corrections to the State and Memphis/Shelby County

regulations and some of the Nashville/Davidson County regulations have not been submitted, Region IV sent a letter to the Governor on June 25, 1991 indicating that Tennessee failed to submit a required plan or plan element. This letter included a detailed list of the deficiencies that have not yet been corrected.

B. States for Which EPA is Not Making a Finding

Alabama

The EPA Region IV Office identified deficiencies in 26 of the Birmingham local agency's VOC regulations. Birmingham, through the State of Alabama, has submitted revised regulations addressing all of the deficiencies except for capture efficiency. Region IV has reviewed the regulations for consistency with EPA guidance and is in the process of preparing a **Federal Register** notice evaluating the revisions. Birmingham is on schedule to complete the capture efficiency changes by October 1991. Region IV sent a letter to the Director of the Alabama Department of Environmental Management on June 24, 1991 indicating that all of the identified deficiencies except capture efficiency had been addressed.

Connecticut

The EPA Region I Office identified one missing regulation and a number of deficiencies in the Connecticut VOC regulations. Connecticut has submitted revised regulations addressing all of the identified deficiencies for which EPA would make a finding of failure to make a submittal. Region I proposed to approve these regulations and is currently preparing to take final action. Nevertheless, Region I sent a letter to the Commissioner of the Connecticut Department of Environmental Protection on June 10, 1991 in part because a SIP revision correcting the deficiency related to capture efficiency has not been submitted. The EPA is not making a finding of failure to submit a plan or plan element because Connecticut has committed to a schedule to correct this deficiency.

Delaware

The EPA Region III Office identified deficiencies in 16 of the Delaware VOC regulations. Delaware has submitted revised regulations addressing all of these deficient regulations. Region III is currently in the process of reviewing these regulations for consistency with EPA guidance. Region III sent a letter to the Secretary of the Delaware Department of Natural Resources and Environmental Control indicating that all of the identified deficiencies had been addressed.

Florida

The EPA Region IV Office identified deficiencies in 17 of the Florida VOC regulations. Florida has submitted revised regulations addressing all of the identified deficiencies except capture efficiency. Region IV has reviewed the regulation changes for consistency with EPA guidance and is in the process of preparing a **Federal Register** notice evaluating the revisions. Florida is on schedule to complete the capture efficiency changes by October 1991. Region IV sent a letter to the Secretary of the Florida Department of Environmental Regulation on June 25, 1991 indicating that all of the identified deficiencies had been addressed.

Georgia

The EPA Region IV Office identified deficiencies in 14 of the Georgia VOC regulations. Georgia has submitted revised regulations addressing all of the identified deficiencies except capture efficiency. Region IV has reviewed the regulation changes for consistency with EPA guidance and is in the process of preparing a **Federal Register** notice evaluating the revisions. Georgia is on schedule to complete the capture efficiency changes by October 1991. Region IV sent a letter to the Governor on June 25, 1991 indicating that all of the identified deficiencies except capture efficiency had been addressed.

Illinois

The EPA Region V Office identified 36 deficiencies in the Illinois VOC regulations and 2 missing regulations. Because finally-adopted regulations had not been submitted, Region V sent a letter to Governor Jim Edgar on June 11, 1991 indicating that Illinois failed to submit a required plan or plan element. This letter included a detailed list of the deficiencies that have not yet been corrected and the regulations that were found to be missing. On July 31, 1991, Illinois submitted finally-adopted VOC regulations that address all of the deficiencies and missing regulations. Region V is currently in the process of reviewing these regulations for consistency with EPA guidance. Because regulations have been submitted to address the deficiencies, EPA is not making a finding of failure to submit the corrections.

Indiana

The EPA Region V Office identified 18 deficiencies and 1 missing regulation in the Indiana VOC regulations. Indiana has submitted revised regulations addressing all previously-identified deficiencies. Region V is currently in the process of reviewing these revised regulations for consistency with EPA guidance. Indiana has not yet submitted a capture efficiency test method regulation but has submitted an acceptable schedule for the adoption and submittal of this regulation. Region V sent a letter to Governor Evan Bayh on June 11, 1991 indicating that the identified deficiencies had been addressed.

Louisiana

The EPA Region VI Office identified 31 deficiencies in the Louisiana VOC regulations. The Governor submitted emergency regulations addressing all of the deficiencies. Region VI is currently in the process of reviewing these regulations for consistency with EPA guidance. Region VI sent a letter to the Governor on June 13, 1991 indicating that the identified deficiencies had been addressed. There is an outstanding deficiency related to capture efficiency; however, the State has committed to correct this deficiency by September 30, 1991.

Maine

The EPA Region I Office identified a number of deficiencies in the Maine VOC regulations. Maine has submitted revised regulations to address all of the identified deficiencies. Region I is currently in the process of reviewing these regulations for consistency with EPA guidance. Region I sent a letter to the Commissioner of the Maine Department of Environmental Protection on June 10, 1991 indicating that all of the identified deficiencies had been addressed.

Maryland

The EPA Region III Office identified deficiencies in 13 of the Maryland VOC regulations and 2 missing regulations. Maryland has submitted revised regulations addressing all of the identified deficiencies and all of the missing regulations. Region III is currently in the process of reviewing these regulations for consistency with EPA guidance. Region III sent a letter to the Secretary of the Maryland Department of the Environment indicating that all of the identified deficiencies had been addressed.

Massachusetts

The EPA Region I Office identified a number of deficiencies in the Massachusetts VOC regulations. Massachusetts has submitted revised

regulations addressing all of the identified deficiencies for which EPA would make a finding of failure to make a submittal. Region I is currently in the process of reviewing these regulations for consistency with EPA guidance. Nevertheless, Region I sent a letter to the Commissioner of the Massachusetts Department of Environmental Protection on June 10, 1991 in part because SIP revisions correcting the deficiencies related to capture efficiency and certain non-CTG regulations have not been submitted. The EPA is not making a finding of failure to submit a plan or plan element because Massachusetts has committed to a schedule to correct these deficiencies.

Missouri

The EPA Region VII Office identified 26 deficiencies in the Missouri VOC regulations. Missouri has submitted revised regulations addressing all of the identified deficiencies. On March 5, 1990 (55 FR 7712) and November 2, 1990 (55 FR 46205), EPA gave final approval to the VOC regulations corrections which Missouri submitted as SIP revisions. Missouri has committed to submit a capture efficiency test method for its Kansas City and St. Louis VOC regulations pertaining to flexographic and rotogravure printing.

North Carolina

The EPA Region IV Office identified deficiencies in 29 of the North Carolina VOC regulations and 29 of the Mecklenburg County regulations. North Carolina has submitted revisions addressing all of the identified deficiencies except for capture efficiency in the State regulations and the Mecklenburg County regulations. Region IV is currently in the process of reviewing the State regulations for consistency with EPA guidance. Because the corrections to the Mecklenburg County regulations had not been submitted as of May 15, 1991, Region IV sent a letter to the Governor on June 25, 1991 indicating that North Carolina failed to submit a required plan or plan element. Revised regulations for Mecklenburg County were submitted to EPA on August 13, 1991. Therefore, EPA is not making a finding of failure to submit a plan or plan revision for North Carolina.

Ohio

The EPA Region V Office identified 57 deficiencies in the Ohio VOC regulations. In addition, Ohio is missing a capture efficiency regulation and an undetermined number of major non-CTG regulations. Although Ohio has not yet submitted a capture efficiency test method regulation and all of its major non-CTG regulations, it has submitted an acceptable schedule for the adoption and submittal of these regulations (and for the correction of newly-identified deficiencies). Ohio has submitted revised regulations addressing all other previously-identified deficiencies. Region V is currently in the process of reviewing these regulations for consistency with EPA guidance. On June 11, 199l, Region V sent a letter to Governor George Voinovich indicating that all of the identified deficiencies, with the noted exceptions, had been addressed.

Oregon

The EPA Region X Office identified 18 deficiencies in Oregon's VOC regulations. Oregon has submitted revised regulations addressing all of the deficiencies. Region X is currently in the process of reviewing these regulations for consistency with EPA guidance.

Rhode Island

The EPA Region I Office identified a number of deficiencies in the Rhode Island VOC regulations. Rhode Island has submitted revised regulations addressing all of the identified deficiencies for which EPA would make a finding. Region I has proposed to approve these regulations and is currently preparing to take final action. Nevertheless, Region I sent a letter to the Director of the Rhode Island Department of Environmental Management on June 11, 1991 in part because a SIP revision correcting the deficiency regarding capture efficiency had not been submitted. The EPA is not making a finding of failure to submit a plan or plan element because Rhode Island has committed to a schedule to correct this deficiency.

Texas

The EPA Region VI Office identified 124 deficiencies in the Texas VOC regulations. Texas has submitted revised regulations addressing all of the deficiencies. Region VI is currently in the process of reviewing these regulations for consistency with EPA quidance. Region VI sent a letter to the Governor on June 13, 1991 indicating that all of the identified deficiencies had been addressed. There is an outstanding deficiency related to capture efficiency; however, the State has committed to correct this deficiency by September 30, 1991.

Utah

The EPA Region VIII Office identified nine deficiencies in the Utah VOC regulations (Utah Air Conservation Regulations 4.9 and 4.9.1 through 4.9.8) and several missing regulations. Utah has submitted revised-regulations addressing all of the deficiencies and has submitted all of the missing regulations or indicated that the missing regulations are not necessary due to the absence of affected sources for the specific source category in question. Region VIII is currently in the process of reviewing these regulations for consistency with EPA guidance.

Virginia

The EPA Region III Office identified deficiencies in 15 of the Virginia VOC regulations and 5 missing regulations. Virginia submitted revised regulations addressing all of the identified deficiencies and all but one missing regulations. Region III is currently in the process of reviewing these regulations for consistency with EPA guidance. The EPA is not making an official finding of failure to submit a required plan or plan element regarding the missing non-CTG regulation since Virginia committed to adopt this regulation by November 15, 1992.

Washington

The EPA Region X Office identified 18 deficiencies in Washington's VOC regulations. Washington has submitted revised regulations addressing all of the deficiencies. Region X is currently in the process of reviewing these regulations for consistency with EPA guidance.

West Virginia

The EPA Region III Office identified deficiencies in three West Virginia VOC regulations. West Virginia submitted revised regulations addressing all of the identified deficiencies. Region III is currently in the process of reviewing these regulations for consistency with EPA guidance. Region III sent a letter to the Secretary of the West Virginia Department of Labor, Commerce and Environmental Resources on June 5, 1991 indicating that all of the identified deficiencies had been addressed.

Wisconsin

The EPA Region V Office identified a number of deficiencies and one missing regulation, for capture efficiency, in the Wisconsin VOC regulations. Wisconsin has submitted revised regulations addressing all identified deficiencies. Region V is currently in the process of reviewing these regulations for consistency with EPA guidance. Wisconsin has not yet submitted a capture efficiency test method regulation but has submitted an acceptable schedule for the adoption

and submittal of this regulation. Region V sent a letter to Governor Tommy Thompson on June 10, 1991 indicating that all of the identified deficiencies had been addressed.

V. Consequences

As discussed previously, the finding of failure to submit a plan or plan element required under section 182(a)(2)(A) of the CAA (noted above) triggers the 18-month time clock for mandatory sanctions under section 179(a), the Administrator's discretionary authority to impose sanctions under section 110(m), and the 2-year time clock for promulgation of Federal VOC regulations under section 110(c)(1). Under section 179(b), EPA may elect to impose either a highway funding sanction or a 2-to-1 offset sanction. However, if a submittal is not made within 6 months after the first sanction goes into effect, EPA must impose the second sanction. The EPA is taking comment on the findings made today and does not plan to impose sanctions until final action is taken to confirm the findings.

The EPA also plans to propose regulations to correct deficiencies where a State is not expected to make a submittal addressing those deficiencies and expects to promulgate regulations if the deficiencies have not been corrected by the State within 2 years after the date of this notice. In a separate notice, EPA will publish, as an advance notice of proposed rulemaking, a set of model VOC regulations that will be used as the basis of any future Federal regulations proposed for a particular State.

VI. Final Action

The EPA has made a finding under section 179(a)(1) that the States listed in Table A failed to submit one or more of the RACT corrections required under section 182(a)(2)(A) of the CAA. Through this notice, EPA is also taking comment on these findings. The EPA will respond to comments received in response to this notice in a notice of final rulemaking. Today's notice starts the time clocks for the mandatory imposition of sanctions and promulgation of a FIP as specified in the CAA.

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, requires the identification of potentially adverse impacts of Federal actions upon small business entities. The Act requires the completion of a regulatory flexibility analysis for every action unless the Administrator certifies that the action will not have a significant economic impact on a substantial number of small entities. The EPA does not have sufficient information at this time to determine if the future potential imposition of sanctions on each area subject to a finding of failure to submit would have a significant economic impact on a substantial number of small businesses. Therefore, EPA cannot foresee the future impact of resultant sanctions on small businesses.

Authority: 42 U.S.C. 7410(m), 7509 (a) and (b), 7511a(a)(2)(A).

Dated: October 10, 1991.

William K. Reilly,

Administrator.

Table A

Areas that Failed to Submit Rule Corrections by May 15, 1991:

Arizona:
- Maricopa County

California:
- El Dorado County APCD
- Sacramento Metropolitan AQMD
- Santa Barbara County APCD
- South Coast AQMD
- Fresno County APCD
- Kings County APCD

District of Columbia:
- Entire District

Kentucky:
- Ashland/Huntington
- Louisville
- Northern Kentucky

Michigan:
- Detroit-Ann Arbor
- Grand Rapids
- Muskegon

New Hampshire:
- New Hampshire portion of the Boston-Lawrence-Salem CMSA plus an additional portion of Rockingham County
- New Hampshire portion of the Portsmouth-Dover-Rochester MSA plus the remaining portion of Strafford County
- Manchester plus the remaining portions of Merrimack, Rockingham and Hillsboro Counties

New Jersey:
- Entire State

New York:
- New York City Metropolitan Area—New York City and the counties of Nassau, Suffolk, Rockland and Westchester

Pennsylvania:
- Philadelphia CMSA
- Allentown—Bethlehem MSA
- Pittsburgh—Beaver Valley CMSA
- Pittsburgh—Original SIP Planning Areas
- Erie MSA
- Harrisburg—Lebanon—Carlisle MSA
- Lancaster MSA
- Reading MSA
- Scranton—Wilkes-Barre MSA (except Columbia County)
- Sharon MSA
- York MSA

Tennessee:
- Memphis/Shelby County

[FR Doc. 91-25318 Filed 10-21-91; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 56, No. 204
Tuesday, October 22, 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 COMMERCE

International Trade Administration

[A-588-820]

Postponement of Preliminary Antidumping Duty Determination: New Minivans From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: October 22, 1991.

FOR FURTHER INFORMATION CONTACT: James Terpstra, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at (202) 377-3965.

Postponement:

On June 19, 1991, the Department of Commerce (the Department) initiated an antidumping duty investigation of new minivans from Japan. The notice stated that we would issue our preliminary determination on or before November 7, 1991 (56 FR 29221, June 26, 1991).

On October 10, 1991, counsel for petitioners requested that the Department postpone the preliminary determination in this investigation until 210 days after the date on which the antidumping petition was filed. On October 15, 1991, counsel for Toyota Motor Corporation and Toyota Motor Sales, U.S., Inc. (collectively "Toyota"), submitted comments in opposition to petitioners' request. We determined that Toyota's arguments did not provide compelling reason to deny petitioners' request. Therefore, pursuant to 19 CFR 353.15(c), we are postponing the date of the preliminary determination in this investigation until not later than December 27, 1991. The U.S. International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Act.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: October 17, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-25428 Filed 10-21-91; 8:45 am]

BILLING CODE 3510-DS-M

Seattle University, et al., Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated 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 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 91-103. *Applicant:* Seattle University, Seattle, WA 98122. *Instrument:* Electron Microscope, Model EM 900. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 56 FR 36776, August 1, 1991. *Order Date:* April 29, 1991.

Docket Number: 91-106. *Applicant:* University of Illinois at Urbana-Champaign, Urbana, IL 61801. *Instrument:* Electron Microscope, Model H-9000. *Manufacturer:* Hitachi Scientific Instruments, Japan. *Intended Use:* See notice at 56 FR 36776, August 1, 1991. *Order Date:* April 1, 1991.

Docket Number: 91-117. *Applicant:* North Carolina State University, Raleigh, NC 27695. *Instrument:* Electron Microscope, Model EM-002B. *Manufacturer:* ABT Corporation, Japan. *Intended Use:* See notice at 56 FR 41121, August 19, 1991. *Order Date:* September 5, 1990.

Docket Number: 91-121. *Applicant:* University of Missouri-Kansas City, Kansas City, MO 64110. *Instrument:* Electron Microscope, Model JEM-1200EXII/DP/DP. *Manufacturer:* JEOL Limited, Japan. *Intended Use:* See notice at 56 FR 46597, September 13, 1991. *Order Date:* June 5, 1991.

Docket Numbers: 91-123 and 91-124. *Applicant:* Consortium for Surface Processing, Stevens Institute of Technology, Hoboken, NJ 07030. *Instruments:* Electron Microscopes, Models CM20 FEG and CM30 ST. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 56 FR 46597, September 13, 1991. *Order Date:* March 27, 1991.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of applicant by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-25429 Filed 10-21-91; 8:45 am]

BILLING CODE 3510-DS-M

University of Maine; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made 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 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 91-074. *Applicant:* University of Maine, Orono, ME 04469. *Instrument:* Isoprep 18 Equilibrium System, Model PS/003. *Manufacturer:* VG Isotech Ltd., United Kingdom. *Intended Use:* See notice at 56 FR 25412, June 4, 1991.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by

the same manufacturer. The National Institutes of Health advises in its memorandum dated August 30, 1991 that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-25430 Filed 10-21-91; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

October 17, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: October 24, 1991.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6496. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 338/339 and 638/639 are being increased for special carryforward. As a result, the limit for Category 638/639, which is currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 49675, published on November 30, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 17, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 26, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on October 24, 1991, you are directed to amend further the directive dated November 26, 1990 to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Malaysia:

Category	Adjusted twelve-month limit [1]
338/339	819,617 dozen.
638/639	366,049 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-25427 Filed 10-21-91; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

11 October 1991.

The USAF Scientific Advisory Board Foreign Technology Division Advisory Group will meet on 7-8 November 1991, from 8 a.m. to 5 p.m., at the Foreign Technology Division, Wright-Patterson AB, OH.

The purpose of this meeting is to receive classified briefings and hold classified discussion on FTD items of interest.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-25339 Filed 10-21-91; 8:45 am]

BILLING CODE 3910-01-M

ENDANGERED SPECIES COMMITTEE

Exemption Application

AGENCY: Endangered Species Committee.

ACTION: Notice of Threshold Determination and Opportunity to Review Administrative Record.

SUMMARY: A Notice in the September 25, 1991 **Federal Register**, 56 FR 48546, advised that the Bureau of Land Management filed an application with the Secretary of the Interior seeking an exemption from section 7 of the Endangered Species Act that would permit the Bureau to hold timber sales on 44 tracts remaining in its 1991 timber sales program in Oregon.

The Notice indicated that pursuant to 16 U.S.C. 1536(g) and 50 CFR 452.03 the Secretary of the Interior was required to make certain threshold determinations concerning the application by October 1, 1991, unless the Bureau of Land Management and the Secretary agreed to an extension of the deadline. On October 1, the Secretary determined that the threshold requirements have been met. Accordingly, the application qualifies for consideration by the Endangered Species Committee.

DATES: In light of the Secretary's determination that the threshold requirements have been met, a hearing will be conducted, probably in December of this year, and the Secretary will prepare a report and submit it to the Committee by February 20, 1992, unless the Bureau of Land Management and the Secretary agree to an extension of time. The Committee must act on the exemption application within 30 days of receiving the Secretary's report.

ADDRESSES: Correspondence to the Secretary or the Committee should be addressed to the Executive Secretariat, U.S. Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Copies of the exemption application may be inspected without charge and

may be obtained for a fee of $221.00 at the Natural Resources Library, 1st Floor, Department of the Interior, 1849 C St., NW., Washington, DC 20240. The Administrative Record can also be reviewed on a laser image storage device at the Library, from 1 p.m. until 5 p.m. Monday through Friday. In addition, copies of the application will be offered for sale by the Superintendent of Documents in the near future, and will also be available for examination free of charge at all U.S. Government Depository libraries. Further, the application and the Administrative Record can be reviewed in Portland, Oregon, at the following location from 8–11 a.m. and 1–3 p.m. Pacific Time: Office of Environmental Affairs, Department of the Interior, 500 NE Multonmah St., Suite 600, Portland, Oregon 97232–2036. Because of the small size of the review facility, persons wishing to review the documentation should telephone the facility at (503) 231–6157 or FTS 429–6157 to establish a time for the review. Questions concerning the exemption process may be addressed to Mr. Jon H. Goldstein (202) 208–4077.

SUPPLEMENTARY INFORMATION: On June 17, 1991, the U.S. Fish and Wildlife Service issued biological opinions to the Bureau of Land Management concerning timber sales on 44 tracks remaining in its 1991 timber sales program in Oregon. The Service concluded that these sales are likely to jeopardize the continued existence of the Northern Spotted Owl, a species listed as threatened under the Endangered Species Act. On September 11, 1991, the Director of the Bureau of Land Management submitted an application to the Committee seeking an exemption.

The exemption application describes the location of the 44 tracts and the method by which the timber would be harvested, and states that all legal requirements for conducting the proposed actions have been satisfied. The application also discusses certain alternatives to the proposed actions that the Bureau considered. As a result of the Secretary's determination that the threshold requirements have been met, the application will be considered by the Committee.

John E. Schrote,

Assistant Secretary-Policy, Management and Budget and Staff to the Chairman, Endangered Species Committee.

[FR Doc. 91–25465 Filed 10–21–91; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF ENERGY

Intent to Prepare a Remedial Investigation/Feasibility Study-Environmental Impact Statement: Response Actions at a Site in Wayne, New Jersey

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent to prepare a remedial investigation/feasibility study-environmental impact statement.

SUMMARY: Notice is hereby given that the Department of Energy (DOE), under its Formerly Utilized Sites Remedial Action Program (FUSRAP), intends to conduct a comprehensive environmental review and analysis of the Wayne site in Wayne, New Jersey, to determine the nature and extent of existing contamination at the site and to evaluate alternative response actions. The Wayne site is comprised of the DOE-owned Wayne Interim Storage Site (WISS) and several contaminated non-DOE owned vicinity properties near the WISS—including the Wayne Township Park, Sheffield Brook (including 15 properties along the brook, a ditch, and a drainage pipe), Pompton Plains Railroad Spur, and a school bus maintenance facility located in Wayne Township and Pequannock Township, New Jersey. (A vicinity property is an area not owned or controlled by DOE that is radioactively contaminated above DOE guidelines for residual radioactive material as a result of previous processing of radioactive materials.) Removal actions have been conducted at all affected properties except for the WISS and the Pompton Plains Railroad Spur. The environmental review and analysis will integrate the environmental impact values of the National Environmental Policy Act (NEPA) and requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA)—hereafter referred to as CERCLA. The Environmental Impact Statement (EIS) values under NEPA will be incorporated into the remedial investigation/feasibility study (RI/FS) requirements of CERCLA. The resulting report will be the RI/FS–EIS. DOE also announces its intent to conduct a public scoping meeting.

ADDRESSES: Comments or suggestions on the scope of the RI/FS–EIS and requests to speak at the scoping meeting discussed below in the Scoping section should be addressed to: Mr. Lester K. Price, Director, Former Sites Restoration Division, Oak Ridge Operations Office, U.S. Department of Energy, Post Office Box E, Oak Ridge, Tennessee 37831 (615–576–0948) or (1–800–253–9750), Fax comments to: (615) 576–0956.

FURTHER INFORMATION CONTACT: For further information on DOE's EIS process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Oversight, EH-25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202–586–4600).

For further information on DOE's RI/FS process, please contact: Ms. Kathleen Taimi, Director, Office of Environmental Compliance, EH–22, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202–586–9024).

DATES: Written comments or suggestions postmarked by November 21, 1991 will be considered in the course of implementing the integrated CERCLA/NEPA process and its documentation. Comments or suggestions postmarked after that date will be considered to the maximum extent practicable. A scoping meeting will be held at the Wayne Hills High School, 272 Berdan Avenue, Wayne, New Jersey 07470, on November 6, 1991, at 7 p.m. local time. Requests to speak at this meeting should be forwarded to Mr. Lester K. Price at the above address by November 1, 1991. Persons who have not submitted a request to speak in advance may register at the scoping meeting. Those who register to speak at the meeting will be called on to present their comments as time permits.

SUPPLEMENTARY INFORMATION:

Background

The Wayne site is located in a suburban area of northern New Jersey that is north-northwest of Newark and northwest of New York City. It is situated at the intersection of Black Oak Ridge Road and Pompton Plains Cross Road in Wayne Township, Passaic County. The Wayne site is comprised of WISS and various properties—including the Wayne Township Park, Sheffield Brook (including 15 properties along the brook, a ditch, and a drainage pipe), Pompton Plains Railroad Spur, and a school bus maintenance facility in Wayne Township and Pequannock Township, New Jersey. Removal actions have been conducted at all affected properties except the WISS and the Pompton Plains Railroad Spur. The WISS is a storage site located on property once owned by Rare Earths, Inc. and subsequently acquired by W. R. Grace & Co. and then donated to DOE. The WISS contains a storage pile of

approximately 83,000 m^3 (109,000 yd^3) of contaminated materials from 16 vicinity properties. The vicinity properties are located in close proximity to the WISS in Wayne and Pequannock townships.

Beginning in 1948, the Rare Earths facility was used to process monazite sand for the extraction of thorium and rare earth minerals. After passage of the Atomic Energy Act (AEA) in 1954, Rare Earths received an Atomic Energy Commission (AEC) license to continue this processing. In 1957, the Davison Chemical Division of W. R. Grace acquired the facility; processing operations continued until July 1971. During this period, waste and residues from the processing operations included ore tailings, yttrium sludges, and sulfate precipitates. Some process wastes were buried on the site, and some liquid waste streams were treated in an on-site waste treatment plant, neutralized, and released into local storm drains as liquid effluent. As storm drains emptied into Sheffield Brook, which overflows its banks during heavy rainfalls, contamination spread to nearby low-lying properties.

After cessation of processing operations in 1971, the facility was licensed only for storage. In 1974, W. R. Grace undertook a partial cleanup of the site. Several buildings were demolished, with the rubble and processing equipment buried on the site. The disposal areas on the site were covered with fill to reduce radiation levels to below 0.2 mrem per hour. During the same year, the Nuclear Regulatory Commission (NRC) assumed the licensing responsibilities formerly held by the AEC. The storage license for the W. R. Grace plant was terminated in 1975, following site decommissioning.

Radiological surveys of the area were conducted during 1981–1985 and four offsite areas of contamination were identified: Wayne Township Park, Sheffield Brook, Pompton Plains Railroad Spur (formerly used to unload monazite sand shipments to W. R. Grace), and a school bus maintenance facility

Under the Energy and Water Development Appropriations Act of 1984, Public Law No. 98–50, Congress authorized DOE to undertake a decontamination research and development project at Wayne involving the cleanup of the Wayne site and the contaminated vicinity properties. DOE manages the cleanup as part of FUSRAP. Since 1984, DOE has maintained an environmental monitoring program to determine any impacts on human health and the environment caused by contaminants on the site. Data from the radiological surveys were used to plan the removal action of vicinity properties and to convert the W. R. Grace facility into a storage site (i.e., WISS). In the fall of 1986, a small area at Wayne Township Park and a small area along the fence between WISS and the school bus maintenance facility were decontaminated, completing removal actions at both properties. Also at this time, an area in front of the office building at WISS was decontaminated, and a small quantity of contaminated material was removed from the Right-of-Way of Pompton Plains Cross Road (across the street from WISS). The Pompton River was surveyed at its confluence with Sheffield Brook, with the results indicating that contamination was confined to the mouth of the brook and did not extend to the river or downstream. Contaminated sediment in the channel and floodplain of Sheffield Brook between Pompton Plains Cross Road and Farmingdale Road was removed. In 1987, excavation along the Brook was completed in the area between Farmingdale Road and Pompton River, which required excavation through the roadbed at Farmingdale Road. Removal of contaminated sediment at the mouth of Sheffield Brook entailed construction of a cofferdam in order to permit excavation into the Pompton River floodplain. If future actions such as verification and sampling are deemed necessary within the floodplain of Pompton River, then these actions will comply with the requirements of 10 CFR part 1022, Compliance With Floodplain/Wetlands Environmental Review Requirements. Remedial action at the WISS and the Pompton Plains Railroad Spur, the only areas where decontamination is not yet completed, will be completed based on the Record of Decision at the end of the RI/FS–EIS process.

The Wayne site (i.e., WISS and vicinity properties) may also be contaminated with non-radioactive chemical contaminants. Materials from these properties were primarily confined to radioactive contaminants.Chemical contamination at WISS may have occurred from disposal of processing waste or debris from building decontamination. Limited chemical characterization of soil was performed at WISS in early 1985 in connection with an investigation that was initiated to determine the source of beads of metallic mercury observed on the asphalt pavement near the southeast corner of the WISS office building. During 1986 and 1987, random chemical sampling of the storage pile was conducted in which several chemicals (i.e., metallic mercury, fluoranthene, and pyrene) were detected.

DOE executed on September 17, 1990, a Federal Facility Agreement (FFA) with the Environmental Protection Agency, Region II. The FFA was made available on September 17, 1990, for public review and comment. The public comment period expired on November 19, 1990, and the FFA became effective on April 22, 1991. Under the FFA, DOE will assume responsibility for:

- All contamination, both radioactive and chemical, whether commingled or not, at the WISS.
- All radioactive contamination occurring on any vicinity property that is above DOE action levels and is related to thorium processing at the W.R. Grace site.
- Any chemical or non-radioactive contamination on vicinity properties that:

—Is mixed or commingled with radioactive contamination above DOE action levels;
—Originated at the WISS; or
—Was associated with specific thorium manufacturing or processing activities at the W.R. Grace site.

The FFA does not assign responsibility to DOE for managing areas, other than the WISS, that are only chemically contaminated with no connection to processing of radioactive materials at the W.R. Grace site.

Environmental Review Process

DOE intends to conduct a comprehensive environmental review and analysis to meet the requirements of CERCLA and incorporate the values of NEPA for implementing response actions at Wayne and three other New Jersey sites for which DOE has responsibility for remediation under FUSRAP. The three other sites, located at Maywood, Middlesex, and New Brunswick, have similar contaminants and pose similar environmental issues. Because the four sites are not located near each other, DOE is planning to prepare separate CERCLA–NEPA documents for each site. Each document, however, will address any common issues and cumulative impacts associated with the other sites.

The Maywood site is located 21 km (13 mi) east of the Wayne site in Bergen County. The Middlesex and New Brunswick sites are located 53 km (33 mi) southwest of the Wayne site in Middlesex County. The Wayne, Maywood, and Middlesex sites consist of approximately 83,000 m^3 (109,000 yd^3), 260,000 m^3 (340,000 yd^3), and 68,000 m^3 (88,000 yd^3) of contaminated

materials, respectively. The New Brunswick site is a recently assigned FUSRAP site and, as such, specific information (i.e., site description, estimated waste volume, and waste characteristics) has not yet been incorporated into planning documents for the New Brunswick site.

The CERCLA environmental review and analysis process has two major phases, a remedial investigation and a feasibility study, which are also the titles or partial titles of the reports resulting from these phases. It is DOE policy, under DOE Order 5400.0, to integrate the values of NEPA and the requirements of the CERCLA process for remedial actions at sites for which it is responsible. Under the integrated policy, the CERCLA process is supplemented, as appropriate, to incorporate the values of NEPA.

The integrated CERCLA/NEPA process begins with scoping and planning phases that culminate in a series of planning documents, including the RI/FS work plan. In the work plan, the problems at a site are scoped by analyzing existing data, identifying the contaminants of concern, projecting potential exposure routes, identifying any additional specific information that is available, and specifying tasks required throughout the entire remediation process to fully remediate the site problem(s).

From the work plan, a field sampling plan is written to obtain the required data. Companion documents include the health and safety plan, the quality assurance project plan, and the community relations plan. The health and safety plan specifies the procedures needed to protect workers and the general public. The quality assurance project plan specifies the procedures, detection levels, and data quality checks to be used in the laboratory analyses. The community relations plan outlines procedures to ensure that the public is kept informed and given the opportunity to offer input.

The RI phase of the remediation decision-making process includes activities associated with site investigations, sample analyses, and data evaluation, which are performed to characterize the site and determine the nature and extent of contamination. In addition, applicable or relevant and appropriate requirements must be identified for the proposed action; bench-scale or pilot studies may be performed to test potentially applicable technologies. The RI phase also includes a baseline risk assessment (i.e., a quantitative assessment of the primary health and environmental threats under various scenarios, including a no-action scenario).

The FS phase includes screening of remedial technologies, identification and screening of response alternatives, development of general performance criteria for each alternative, and detailed evaluation and comparison of alternatives consistent with both CERCLA and NEPA. Alternatives to be considered include: (1) no action; (2) treatment and disposal of wastes either on-site or off-site (off-site disposal would be considered generically, not specifically); and (3) on-site or off-site containment or institutional control alternatives that control the threats posed by hazardous substances and/or prevent exposure. (The no-action alternative will be developed to provide an environmental baseline against which the impacts of the proposed action and the alternatives can be compared.)

The data collected during the RI phase influence the development of the remedial alternatives in the FS phase, which in turn affects the data needs and scope of treatability studies and can result in additional field investigations.

The RI/FS process will be supplemented as necessary to be consistent with NEPA and the Council on Environmental Quality's regulations (40 CFR parts 1500–1508). DOE has determined that an EIS is the appropriate level of NEPA documentation for the Wayne site. DOE will prepare an EIS implementation plan to record the results of the NEPA scoping process and to present the approach for preparation of an EIS. The EIS implementation plan will be prepared following the scoping meeting and will be appended to the work plan for Wayne.

DOE intends to use the RI/FS–EIS for the Maywood site as a lead document for CERCLA/NEPA review for the four New Jersey FUSRAP sites. The Maywood RI/FS–EIS will address common issues and cumulative impacts associated with response actions at all of the sites. The CERCLA/NEPA documents for the other sites, including the Wayne site, will present site-specific impacts and summarize, reference, and update the information presented in the lead Maywood document as appropriate.

Nothing in this Notice of Intent (NOI), or in other documents to be prepared, is intended to represent a statement on the legal applicability of NEPA to remedial actions under CERCLA.

Preliminary List of Potential Issues

Potential issues related to response actions at the Wayne site include environmental impacts as well as factors that may result from or be influenced by implementation of one or more of the remedial alternatives. The preliminary list that follows is based on issues that have been raised relative to other DOE proposals of this nature. Interested parties are invited to participate in the scoping process discussed below and to help refine this list to arrive at the significant issues to be analyzed in depth in the integrated CERCLA/NEPA process and to eliminate from detailed study the issues that are not significant.

The potential major issues that may arise and therefore require analysis in the integrated CERCLA/NEPA process are as follows:

1. Potential radiological impacts in terms of both radiation doses and resulting health risks:
   - On people, including workers and the public, i.e., individuals and the total population, children and adults, present and future generations;
   - Along transportation routes and near other sites relevant to the proposed alternatives;
   - Associated with various pathways to humans, including surface waters, ground waters, gases, dusts, particulates, and biota;
   - Due to natural forces such as erosion and flooding; and
   - Associated with human intrusion into the contaminated materials.
2. Potential chemical impacts in terms of doses and resulting health risks:
   - On people, including workers and the public, i.e., individuals and the total population, children and adults, present and future generations;
   - Along transportation routes and near other sites relevant to the proposed alternatives;
   - Associated with routine operations and accidents;
   - Associated with various pathways to humans, including air, soil, surface waters, groundwaters, and biota;
   - Due to natural forces such as erosion and flooding; and
   - Associated with human intrusion into the contaminated materials.
3. Potential engineering and technical issues;
   - The most reasonable engineering options for each type of waste/residue;
   - Probable duration of isolation;
   - Rates and magnitude of loss of containment;
   - Related to site-specific geohydrology and ecology;
   - Related to site-specific wind dispersion patterns; and
   - Site characterization and research and development work necessary before

the decision or before actual implementation of an alternative.

4. Potential issues relative to mitigative measures and monitoring:

- Health-physics procedures for workers; and
- Control measures for erosion, gases, and dusts.

5. Potential institutional issues:

- Project-specific criteria for decontamination, effluents, environmental concentrations, and release of a site for use without radiological restrictions;
- Future institutional controls, i.e., monitoring and maintenance; and
- Institutional issues that need to be resolved before an alternative can be implemented.

6. Potential socioeconomic issues;

- Effects on land uses, values, and marketability; and
- Effects on local transportation systems.

7. Cumulative impacts associated with the remedial actions proposed to be taken or reasonably foreseeable at the Maywood, Wayne, Middlesex and New Brunswick sites.

8. Issues related to CERCLA criteria for selection of a remedial action:

- Overall protection of human health and the environment;
- Compliance with applicable or relevant and appropriate requirements;
- Long-term effectiveness and permanence;
- Reduction of waste toxicity, mobility, and volume through treatment;
- Short-term effectiveness;
- Implementability;
- Cost;
- State acceptance; and
- Community acceptance.

Scoping

The results of the integrated CERCLA/NEPA assessment process for the Wayne site will be presented in the draft RI/FS–EIS. The draft work plan and companion documents, fact sheets, technical reports, and other information related to DOE activities at the Wayne site have been placed in the Wayne Public Library at the address noted below. When information repositories are established for the other New Jersey sites, Wayne documents related to those sites will also be placed there.

The scoping process will involve all interested agencies (Federal, State, and local), groups, and members of the public. Comments are invited on the alternatives and the issues to be considered in the integrated CERCLA/NEPA process, as discussed in this NOI and in the draft RI/FS–EIS work plan. A public scoping meeting is scheduled starting at 7 p.m., to be held on November 6, 1991, in the Wayne Hills High School, 272 Berdan Avenue, Wayne, New Jersey 07470. This will be an informal meeting, but a complete record will be taken and copies of the transcript will be made available as detailed below.

The meeting will be presided over by an independent facilitator, who will explain DOE procedures for conducting the meeting. The meeting will not be conducted as an evidentiary hearing, and those who choose to make statements will not be subject to cross examination by other speakers. However, to facilitate the exchange of information and to clarify issues, DOE and its representatives may respond by answering questions and making short clarifying statements, as necessary or appropriate. To ensure that everyone who wishes to speak has a chance to do so, 5 minutes will be allotted for each speaker, and speakers are encouraged to submit a written summary of comments. Depending on the number of persons requesting to be heard, DOE may allow longer times for representatives of organizations; persons wishing to speak on behalf of an organization should identify the organization in their request.

Persons who have not submitted a request to speak in advance may register to speak at the scoping meeting; they will be called on to present their comments if time permits. Written comments or suggestions will also be accepted at the meeting or should be sent to Mr. Lester K. Price at the address given above in the Addresses section, postmarked no later than November 21, 1991. Comments or suggestions postmarked after that date will be considered to the maximum extent practicable. Oral and written comments will be given equal weight.

Copies of the scoping meeting transcript, NEPA EIS implementation plan and CERCLA workplan, and major references used in preparing the RI/FS–EIS will be available during normal busness hours at the Wayne Public Library, 475 Valley Road, Wayne, New Jersey 07490, and at other locations as appropriate. Certain materials have already been placed at the library (e.g., contamination surveys and yearly monitoring reports, documentation of the basis for waste volume estimates, information on NRC-licensed burial sites, and draft project plans). The transcript of the scoping meeting will be retained by DOE, and a copy will be made available for inspection at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, during business hours (i.e., 9 a.m.–4 p.m.). In addition, anyone may make arrangements with the recorder to purchase a copy. When the draft RI/FS–EIS is available, a notice will be published in the Federal Register and local newspapers to announce the locations where the documents can be reviewed.

Those persons who do not wish to submit comments or suggestions during the scoping period but who would like to receive a copy of the draft RI/FS–EIS for review and comment should notify Mr. Lester K. Price at the address given above in the Addresses section.

DOE expects by mid-summer 1994 to issue the final RI/FS–EIS, which will include the proposed plan and responses to public comments received on the draft RI/FS–EIS (responsiveness summary). DOE will select a remedial action alternative for the site in the Record of Decision to be issued no sooner than 30 days after the final RI/FS–EIS is issued.

Issued in Washington, DC, this 15th day of October, 1991.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 91–25293 Filed 10–21–91; 8:45 am]

BILLING CODE 6450–01–M

Secretary of Energy Advisory Board Task Force on Civilian Radioactive Waste Management; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board Task Force on Civilian Radioactive Waste Management.

Date and Time: November 6, 1991, 8:30 a.m.–5: p.m., November 7, 1991, 8 a.m.–5 p.m.

Place: Room 620, Wells Fargo Building, 1333 Broadway, Oakland, CA 94612.

Contact: Dr. Daniel S. Metlay, Designated Federal Officer, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3903.

Note: Visitor badges are required for access to the meeting room. Members of the public wishing to attend the meeting should contact the Department of Energy Field Office, San Francisco, (510) 273–6395, to facilitate issuance of visitor badges. Personal identification will be required at the time the badges are issued.

Purpose: The Secretary of Energy Advisory Board Task Force on Civilian Radioactive Waste Management was established in May 1991 to: (1) Identify the factors that affect the level of public trust and confidence in Department of Energy programs; (2) assess the effectiveness of alternative financial, organizational, legal, and regulatory arrangements in promoting public trust and confidence; (3) consider the effects on other

programmatic objectives, such as cost and timely acceptance of waste, of those alternative arrangements; and (4) provide the Secretary with recommendations and guidance for implementing those recommendations.

During its meeting in Oakland, the Task Force will discuss the status of activities carried out since its last meeting and make plans for the future. It will also hear presentations relevant to its charter from representatives of the Department's Office of Environmental Restoration and Waste Management and from several Field Offices. Finally, interested parties have been invited to present their views. The public is welcome to comment on any of these presentations. It is especially invited to address the Task Force on these three areas:

- What does the idea of "public trust and confidence" mean?
- What factors contribute to the current level of public trust and confidence?
- What steps might the Department take to strengthen public trust and confidence in its efforts to manage radioactive wastes?

You may submit written comments to Dr. Daniel Metlay, Secretary of Energy Advisory Board, AC–1, 1000 Independence Avenue, SW., Washington, DC 20585. Please write or call Dr. Metlay at the number listed above by November 4 if you intend to make a short oral presentation before the task force.

Tentative Agenda

Location

Wednesday, November 6, 1991, 8:30 a.m.–5 p.m.

8:30 a.m. Task Force discussion.
- National Academy of Sciences and National Academy of Public Administration workshops.
- Case studies.
- Commissioned papers.
- Description of waste management organizations.

11–11:15 a.m. Break.
11:15–noon Public comments.
12 noon–1 p.m. Lunch break.
1 p.m.–5 p.m. Presentations by representatives of the Department of Energy's Office of Environmental Restoration and Waste Management.

Thursday, November 7, 1991, 8 a.m.–4 p.m.

8 a.m.–noon Presentations by representatives of the Department of Energy Field Office.
12 noon–1 p.m. Lunch Break.
1 p.m.–3 p.m. Presentations by interested parties.
3 p.m.–4:30 p.m. Task Force discussions.
4:30 p.m.–5 p.m. Public comments.
5 p.m. Adjourn.

Public Participation: The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact Dr. Metlay, the Designated Federal Officer, at the address or telephone number listed above. Requests must be received before 3 p.m. (E.S.T.) Friday, November 4, 1991. Every effort will be made to include the presentation during the public comment periods. It is requested that oral presenters provide 15 copies of their statements at the time of their presentations.

Minutes: A transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays.

Issued: Washington, DC, on: October 17, 1991.

J. Robert Franklin,

Acting Advisory Committee Management Officer.

[FR Doc. 91–25426 Filed 10–21–91; 8:45 am]

BILLING CODE 6450–01–M

Secretary of Energy Advisory Board Task Force on Energy Research Priorities; Opportunity To Review and Comment on Task Force Report

Pursuant to the Charter of the Secretary of Energy Advisory Board, notice is hereby given of the opportunity to review and comment on a written report of the Secretary of Energy Advisory Board Task Force on Energy Research Priorities. The report to the Secretary of Energy contains the Task Force's recommendations resulting from their meeting of September 19–20 to consider scientific priorities among programs in the General Science portion of the budget for the Office of Energy Research (ER) and other large facility construction programs being proposed for initiation by ER over the next few fiscal years.

The report will be available for review in the Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Single copies of the report will be available upon request by calling (202) 586–7092.

Persons wishing to submit written comments on the report should submit five copies to the contract listed below by October 31, 1991.

Contact: Dr. Robert M. Simon, Designated Federal Officer, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7092.

Issued: Washington, DC, on: October 17, 1991.

J. Robert Franklin,

Acting Advisory Committee Management Officer.

[FR Doc. 91–25425 Filed 10–21–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER92–68–000, et al.]

Long Island Lighting Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 15, 1991.

Take notice that the following filings have been made with the Commission:

1. Long Island Lighting Co.

[Docket No. ER92–68–000]

Take notice that on October 7, 1991, the Long Island Lighting Company ("LILCO") tendered for filing a Lease and Operating Agreement between LILCO and the Nassau County Public Utility Agency ("NCPUA") dated November 14, 1985, as amended on October 19, 1987, and a Lease and Operating Agreement between LILCO and the Suffolk County Electrical Agency ("SCEA") dated November 14, 1985, as amended on October 19, 1987. LILCO asks waiver of the Commission's notice requirements to allow the Agreements to become effective November 14, 1985.

Comment date: October 30, 1991, in accordance with Standard Paragraph E end of this notice.

2. Northern States Power Co. (Minnesota Co.)

[Docket No. ER92–76–000]

Take notice that on October 7, 1991, Northern States Power Company (Minnesota) ("NSP–MN") tendered for filing the Agreement for Transmission Losses dated July 1, 1990 between NSP–MN and the City of Windom, Minnesota. NSP–MN requests that the Agreement for Transmission Losses be accepted for filing effective August 15, 1988, and requests waiver of the Commission's notice and filing regulations to allow this.

Comment date: October 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Consolidated Edison Co. of New York, Inc.

[Docket No. ER92–54–000]

Take notice that on October 7, 1991, Consolidated Edison Company of New York, Inc. ("Con Edison"), tendered for filing a Rate Schedule constituting an agreement to provide transmission service for New England Power Company ("NEP"). The Rate Schedule provides for transmission of 75 MW of firm power and energy purchased by NEP from Public Service Electric & Gas

Company, at a monthly rate of $0.96 per kilowatt.

Con Edison has requested waiver of notice requirements so that the Rate Schedule can be made effective as of November 1, 1988 and terminated as of April 30, 1989.

Con Edison states that a copy of this filing has been served by mail upon NEP.

Comment date: October 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corp.

[Docket No. ER92-70-000]

Take notice that on October 7, 1991, Niagara Mohawk Power Corporation ("Niagara Mohawk") tendered for filing a proposed change to Niagara Mohawk Rate Schedule No. 142, an agreement between Niagara Mohawk and the Long Island Lighting Company. Niagara Mohawk requests waiver of the Commission's notice requirements to allow a proposed effective date of September 1, 1991.

Comment date: October 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Co. of New Hampshire

[Docket No. ER92-72-000]

Take notice that on October 7, 1991, Public Service Company of New Hampshire ("PSNH") tendered for filing as an initial rate schedule an agreement between it and Citizens Utilities Company ("Citizens"). The agreement provides for the sale by PSNH to Citizens of capability and energy of both system power and power from the Newington generating unit along with non-firm transmission service for delivery. PSNH requests waiver of the Commission's notice requirements to allow a proposed effective date of November 1, 1990.

Comment date: October 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Co. of New Hampshire

[Docket No. ER92-73-000]

Take notice that on October 7, 1991, Public Service Company of New Hampshire ("PSNH") tendered for filing as an initial rate schedule an Exchange Agreement between it and UNITIL Power Corporation ("UPC") for 25 MW of capacity and related energy. PSNH requests waiver of the Commission's notice requirements to allow a proposed effective date of October 1, 1990.

Comment date: October 30, 1991, in accordance with Standard Paragraph E end of this notice.

7. Public Service Co. of New Hampshire

[Docket No. ER92-74-000]

Take notice that on October 7, 1991, Public Service Company of New Hampshire ("PSNH") tendered for filing as an initial rate schedule an Agreement between it and Northeast Utilities Service Company, as agent for The Connecticut Light and Power Company ("CL&P"), and Western Massachusetts Electric Company ("WMECO"), for exchange of capacity and associated energy. PSNH requests waiver of the Commission's notice requirements to allow a proposed effective date of July 1, 1990.

Comment date: October 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Co. (Minnesota Co.)

[Docket No. ER92-75-000]

Take notice that on October 7, 1991, Northern States Power Company (Minnesota) ("NSP-MN") tendered for filing the Agreement for Transmission Losses dated July 1, 1990 between NSP-MN and the City of Springfield, Minnesota. NSP-MN requests that the Agreement for Transmission Losses be accepted for filing effective August 15, 1988, and requests waiver of the Commission's notice and filing regulations to allow this.

Comment date: October 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Portland General Electric Co.

[Docket No. ER92-62-000]

Take notice that on October 7, 1991, Portland General Electric Company ("PGE") tendered for filing an Agreement and related documents regarding Boardman Plant Assured Deliveries.

Comment date: October 29, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. Northern States Power Co. (Minnesota Co.)

[Docket No. ER92-79-000]

Take notice that on October 7, 1991, Northern States Power Company (Minnesota) [NSP-MN or NSP] tendered for filing a Joint Transmission Network Agreement dated January 31, 1991, between NSP-MN, Cooperative Power Association (CPA), and United Power Association (UPA).

The Joint Transmission Network (JTN) Agreement essentially provides that the Parties utilize, and share the costs of, a designed 345 kV Joint Transmission Network (JTN) to deliver electric power and energy to their respective transmission systems. The Parties intend to either own facilities, or compensate other Parties providing facilities so that each Party's investment contribution in the JTN is commensurate with its use of the JTN in accordance with the JTN Agreement. The Parties desire to specify compensatory obligations among them in order to achieve parity between each Party's investment contribution and use of the JTN as of the effective date of the JTN Agreement.

NSP requests that the JTN Agreement be accepted for filing effective January 2, 1985, and requests waiver of Commission's notice requirements in order for the Agreement to be accepted for filing on that date. NSP requests that the Agreement be accepted as a supplement to Rate Schedule FERC No. 439, the original rate schedule for service to CPA and UPA.

Comment date: October 28, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. Central Vermont Public Service Corp.

[Docket No. ER92-63-000]

Take notice that Central Vermont Public Service Corporation (CVPS) on October 7, 1991, tendered for filing as an initial rate schedule an Agreement under which CVPS has agreed to the wale of unused transmission capacity from the Company's share of the Highgate Transmission facility (Highgate) to Citizens Utilities Company. The effective period of the Agreement is June 3, 1991 through January 30, 1993.

CVPS requests the Commission to waiver its notice filing requirements to permit the rate schedule to become effective as of June 3, 1991.

Comment date: October 28, 1991, in accordance with Standard Paragraph E at the end of this notice.

12. Northeast Utilities Service Co.

[Docket No. ER92-64-000]

Take notice that on October 7, 1991, Northeast Utilities Service Company (NUSCO) tendered for filing agreements and amendments thereto for transmission, transformation and distribution services by Northeast Utilities Service Company (NUSCO, as agent for The Connecticut Light and Power Company and Western Massachusetts Electric Company) to Chester Municipal Electric Light Department and Russell Municipal Light Department, dated June 1, 1986.

NUSCO requests that the Commission waive its standard notice periods and filing regulations to the extent necessary

to permit the rate schedules to become effective June 1, 1986.

NUSCO states that copies of these rate schedules have been mailed or delivered to each of the parties and to the Massachusetts Department of Public Utilities.

Comment date: October 28, 1991, in accordance with Standard Paragraph E at the end of this notice.

13. Northern States Power Co. (Minnesota Co.)

[Docket No. ER92-60-000]

Take notice that on October 7, 1991, (Minnesota) (NSP-MN or NSP) tendered for filing a Supplement No. 2 to the Interconnection and Interchange Agreement dated November 20, 1990, between NSP-MN and the City of Janesville, Minnesota (Janesville).

Supplement No. 2 to the Interconnection and Interchange Agreement essentially provides for the supply of Supplemental Energy by NSP to Janesville for the purpose of replacing more expensive generation. It maintains the same level of service and Interconnection and Interchange Agreement dated September 14, 1977 and Supplement No. 1 to the Interchange and Interconnection Agreement also dated January 30, 1984.

NSP requests that Supplement No. 2 to the Interchange and Interconnection Agreement be accepted for filing effective November 20, 1990, and requests waiver of Commission's notice requirements in order for the Agreement to be accepted for filing on that date. NSP requests that the Agreement be accepted as supplement to Rate Schedule FERC No. 399, the original rate schedule for service to Janesville.

Comment date: October 28, 1991, in accordance with Standard Paragraph E at the end of this notice.

14. Northeast Utilities Service Co.

[Docket No. ER92-65-000]

Take notice that on October 7, 1991, Northeast Utilities Service Company ("NUSCO") as agent for The Connecticut Light and Power Company and Western Massachusetts Electric Company (collectively referred to as the "NU Companies") tendered for filing a Transmission Service Agreement between the NU Companies and The United Illuminating Company ("UI"), dated May 1, 1990. NUSCO states that this Agreement provides for service to UI for the transmission of purchases and sales of electric system capacity and associated energy. NUSCO requests that the Commission waive its filing requirements to the extent necessary to permit the rate schedule to become effective as of May 1, 1990.

Comment date: October 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

15. Northern States Power Co.

[Docket No. ER92-81-000]

Take notice that on October 7, 1991, Northern States Power Company (Minnesota) (NSP-MN or NSP) tendered for filing a Supplement No. 2 to the Interconnection and Interchange Agreement dated November 20, 1990, between NSP-MN and the City of Delano, Minnesota (Delano).

Supplement No. 2 to the Interconnection and Interchange Agreement essentially provides for the supply of Supplemental Energy by NSP to Delano for the purpose of replacing more expensive generation. It maintains the same level of service and rates as the service NSP-MN provided pursuant to the Interconnection and Interchange Agreement dated September 15, 1977 and Supplement No. 1 to the Interchange and Interconnection Agreement also dated January 30, 1984.

NSP requests that Supplement No. 2 to the Interchange and Interconnection Agreement be accepted for filing effective November 20, 1990, and requests waiver of Commission's notice requirements in order for the Agreement to be accepted for filing on that date. NSP requests that the Agreement be accepted as a supplement to Rate Schedule FERC No. 391, the original rate schedule for service to Delano.

Comment date: October 28, 1991, in accordance with Standard Paragraph E end of this notice.

16. Western Massachusetts Electric Co.

[Docket No. ER92-66-000]

Take notice that on October 7, 1991, Western Massachusetts Electric Company ("WMECO") tendered for filing as a rate schedule a transmission service, transformation, and distribution agreement between WMECO and Groton Electric Light Department. WMECO requests that the Commission waive its notice and filing regulations to the extent necessary to permit the rate schedule to become effective November 1, 1989.

Comment date: October 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

17. Western Massachusetts Electric Co.

[Docket No. ER92-67-000]

Take notice that on October 7, 1991, Western Massachusetts Electric Company ("WMECO") tendered for filing as rate schedules a firm and nonfirm transmission service agreement, together with amendments, between WMECO and New England Power Company. WMECO requests that the Commission waive its notice and filing regulations to the extent necessary to permit the firm rate schedule to become effective October 1, 1990 and the non-firm rate schedule to become effective on July 23, 1990 and to terminate on September 30, 1990.

Comment date: October 30, 1991, in accordance with Standard Paragraph F at the end of this notice.

18. Niagara Mohawk Power Corp.

[Docket No. ER92-71-000]

Take notice that on October 7, 1991, Niagara Mohawk Power Corporation ("Niagara Mohawk") tendered for filing a proposed change to Niagara Mohawk Rate Schedule No. 141, an agreement between Niagara Mohawk and the Central Hudson Gas & Electric Corporation. Niagara Mohawk requests waiver of the Commission's notice requirements to allow a proposed effective date of September 1, 1991.

Comment date: October 30, 1991, in accordance with Standard Paragraph E end of this notice.

19. Maine Electric Power Co.

[Docket No. ER92-46-000]

Take notice that on October 7, 1991, Maine Electric Power Company ("MEPCO"), tendered for filing the following:

Second Letter Amendment, dated September 26, 1991, to the Transmission Service Agreement between Massachusetts Municipal Wholesale Electric Company and Maine Electric Power Company, dated November 1, 1988.

MEPCO has requested waiver of the Commission's notice and filing requirements to the extent necessary to permit the Second Letter Amendment to be effective November 1, 1991.

MEPCO has served copies of the filing on the affected customer and on the Maine Public Utilities Commission.

Comment date: October 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

20. Allegheny Power Service Corp. on Behalf of The Potomac Edison Co.

[Docket No. ER92-45-000]

Take notice that on October 7, 1991, Allegheny Power Service Corporation on behalf of The Potomac Edison Company filed an application for an order directing the establishment of physical connection of facilities to add an interconnection point with Old Dominion Electric Cooperative. The

filing also clarifies Old Dominion Electric Cooperative's status as a customer under the applicable Federal Energy Regulatory Commission electric tariff.

A copy of the filing has been provided to the Virginia State Corporation Commission.

Comment date: October 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

21. Southern Indiana Gas & Electric Co.

[Docket No. ER92–43–000]

Take notice that on October 7, 1991, Southern Indiana Gas and Electric Company ("Southern Indiana") tendered for filing a change in its rate schedule FPC–29 under which it sells standby electrical power to ALCOA Generating Corporation ("AGC"). The change is in pricing calculation methodology and will result in no rate increase or decrease or revenue change. Southern Indiana has requested a waiver of the minimum 60 day notice requirement. The only affected customer is the purchaser. Southern Indiana and AGC are parties to a written Letter Agreement executed on August 1, 1991, for the service.

The reason for the Letter Agreement and included change in the rate schedule is to simplify pricing and reduce significant monthly fluctuations in the cost per kWh experienced with the prior methodology, which is expected to be rectified by the new system average methodology. The Agreement is therefore mutually beneficial.

A copy of the filing has been served upon AGC.

Comment date: October 29, 1991, in accordance with Standard Paragraph E at the end of this notice.

22. Boston Edison Co.

[Docket No. ER92–44–000]

Take notice that on October 7, 1991, Boston Edison Company (BECo) tendered for filing a Power Sales and Exchange Tariff, designated as Tariff No. 6, that provides for the sale and/or change of surplus power from time to time. BECo also tendered for filing executed Service Agreements with several New England utilities which already have entered into such transactions with BECo. BECo seeks waiver of the Commission's notice requirements to that these transactions may become effective as specified in the Service Agreements.

BECo states that under the proposed tariff, sales of system power would be priced at an energy reservation charge rate not to exceed $23.54 per megawatthour plus an energy charge rate which reflects BECo's forecast of the incremental cost of providing the system energy for the transaction. BECo further states that under the proposed tariff, capacity charges associated with unit sales will not exceed the unit's annualized fixed charges.

Comment date: October 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

23. Southern Indiana Gas & Electric Co.

[Docket No. ER92–42–000]

Take notice that on October 7, 1991, Southern Indiana Gas and Electric Company ("Southern Indiana") tendered for filing an initial rate schedule under which it sells seasonal off peak firm power to Hoosier Energy Rural Electric Cooperative, Inc. ("Hoosier"). The service provides an estimated annual revenue of approximately $625,000 to Southern Indiana during a typical calendar year with the service being available during the months of November, December, January, February and March. Southern Indiana has requested a waiver of the minimum 60 day notice requirement. The only affected customer is the purchaser. Southern Indiana and Hoosier are parties to a written Agreement executed in 1989 for the service.

The reason for the Agreement and included rate schedule is that Hoosier required firm power during the aforesaid months which Southern Indiana, being a summer peaking utility, had available during those months. The Agreement is therefore mutually beneficial.

A copy of the filing has been served upon the Indiana Utility Regulatory Commission.

Comment date: October 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

24. Central Maine Power Co.

[Docket No. ER92–47–000]

Take notice that on October 7, 1991, Central Maine Power Company ("CMP"), tendered for filing the following:

Maine Satellite Agreement between Bangor Hydro-Electric Company and Central Maine Power Company, dated as of February 1, 1983.

CMP has requested waiver of the Commission's notice and filing requirements to the extent necessary to permit the Maine Satellite Agreement to be effective as of February 1, 1983.

CMP has served copies of the filing on the affected customer and on the Maine Public Utilities Commission.

Comment date: October 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

25. Consolidated Edison Co. of New York, Inc.

[Docket No. ER92–41–000]

Take notice that on October 7, 1991, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing four Supplements to Con Edison Rate Schedule FERC No. 94 for transmission service for the Long Island Lighting Company ("LILCO"). The Rate Schedule provides for transmission of power and energy from the New York Power Authority's Blenheim-Gilboa station. Supplement No. 1 adds transmission service from an additional source (New York State Electric & Gas Company) for the 1989 Summer Capability Period. Supplement No. 2 provides for a decrease in the daily transmission charge from $84.50 to $83.96 per megawatt, thus decreasing annual revenues under the Rate Schedule by a total of $17,955. Supplement No. 3 provides for a decrease in the transmission charge from $83.96 to $83.06, thus decreasing annual revenues under the Rate Schedule by $16,425. Supplement No. 4 provides for a decrease in the charge from $83.06 to $80.00, thus decreasing annual revenues under the Rate Schedule by $55,845. Con Edison has requested waiver of notice requirements so that Supplement No. 1 can be made effective as of April 30, 1989; Supplement No. 2 as of July 1, 1989; Supplement No. 3 as of July 1, 1990; and Supplement No. 4 as of July 1, 1991.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: October 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

26. Northern States Power Co. (Minnesota Co.)

[Docket No. ER92–77–000]

Take notice that on October 7, 1991, Northern States Power Company (Minnesota) ("NSP–MN") tendered for filing the Interconnection and Interchange Agreement dated November 29, 1990 between NSP–MN and the City of Mountain Lake, Minnesota. NSP–MN requests that the Interconnection and Interchange Agreement for be accepted for filing effective November 29, 1990, and requests waiver of the Commission's notice and filing regulations to allow this.

Comment date: October 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

27. Southern California Edison Co.

[Docket No. ER92-40-000]

Take notice that on October 7, 1991, Southern California Edison Company (Edison) tendered for filing the following agreements:

Agreement for Sale and Interchange of Energy Between Southern California Edison Company and Public Utility District No. 1 of Douglas County, Washington
and
Agreement for Sale and Interchange of Energy Between Southern California Edison Company and Public Utility District No. 2 of Grant County

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: October 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

28. City of Vernon, California v. Pacific Gas and Electric Co.

[Docket No. EL92-2-000]

Take notice that on October 4, 1991, the City of Vernon, California ("Vernon") filed a complaint against Pacific Gas and Electric Company ("PG&E") pursuant to sections 205, 206 and 306 of the Federal Power Act. Vernon requests that the Commission order PG&E to file the California-Oregon Transmission Project Memorandum of Understanding with the Commission pursuant to section 205(c) of the Federal Power Act as an addition to its tariff. Vernon states that it is concurrently moving that this docket be consolidated with docket number EL91-8-000 and ER91-505-000.

Comment date: November 14, 1991 in accordance with Standard Paragraph E at the end of this notice.

29. Southern California Edison Co.

[Docket No. ER92-39-000]

Take notice that on October 7, 1991, Southern California Edison Company (Edison) tendered for filing the following agreements:

Edison-Navajo Transmission Agreement Between Participants in the Navajo Project and Southern California Edison Company
and
Amendment No. 1 to the Participants in the Navajo Project and Southern California Edison Company

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interest parties.

Comment date: October 29, 1991, in accordance with Standard Paragraph E at the end of this notice.

30. Northern States Power Co. (Minnesota Co.)

[Docket No. ER92-78-000]

Take notice that on October 7, 1991, Northern States Power Company (Minnesota) ("NSP-MN") tendered for filing the Crooked Lake Substation Transformation Service Agreement dated August 28, 1989 between NSP-MN and requests waiver of the Commission's notice and filing regulations to allow this.

Comment date: October 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

31. The Cincinnati Gas & Electric Co.

[Docket No. ER92-33-000]

Take notice that The Cincinnati Gas & Electric Company (CG&E) on October 4, 1991, tendered for filing proposed changes in its FERC Electric Tariff, original Volume No. 1 which cancel and supersede the rate schedules in said tariff. The proposed changes would increase revenues from jurisdictional sales and service by approximately $28.2 million based on the 12-month period ending March 31, 1992.

The reason stated by CG&E for the change in rate schedule is primarily to recover the cost of the Wm. H. Zimmer generating Station, placed in service March 30, 1991.

Copies of the filing were served upon the Villages of Bethel, Blanchester, Georgetown, Hamersville, Ripley, and Lebanon municipalities in the State of Ohio; and The Union Light, Heat and Power Company, a wholly owned subsidiary of CG&E, which ultimately serves retail consumers and one wholesale customer within the Commonwealth of Kentucky; and The West Harrison Gas and Electric Company, a wholly owned subsidiary of CG&E, which ultimately serves retail consumers within the State of Indiana, the Public Utilities Commission of Ohio, the Kentucky Public Service Commission and the Public Service Commission of Indiana.

Comment date: October 29, 1991, in accordance with Standard Paragraph E at the end of this notice.

32. Northern States Power Co. (Minnesota Co.)

[Docket No. ER92-82-000]

Take notice that on October 7, 1991, Northern States Power Company (Minnesota) (NSP-MN or NSP) tendered for filing a Supplement No. 2 to the Interconnection and Interchange Agreement dated November 20, 1990, between NSP-MN and the City of Glencoe, Minnesota (Glencoe).

Supplement No. 2 to the Interconnection and Interchange Agreement essentially provides for the supply of Supplemental Energy by NSP to Glencoe for the purpose of replacing more expensive generation. It maintains the same level of service and rates as the service NSP-MN provided pursuant to the Interconnection and Interchange Agreement dated September 16, 1977 and Supplement No. 1 to the Interchange and Interconnection Agreement also dated January 30, 1984.

NSP requests that Supplement No. 2 to the Interchange and Interconnection Agreement be accepted for filing effective November 20, 1990, and requests waiver of Commission's notice requirements in order for the Agreement to be accepted for filing on that date. NSP requests that the Agreement be accepted as a supplement to Rate Schedule FERC No. 395, the original rate schedule for service to Glencoe.

Comment date: October 28, 1991, in accordance with Standard Paragraph E end of this notice.

33. Consolidated Edison Co. of New York, Inc.

[Docket No. ER92-53-000]

Take notice that on October 7, 1991, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing three Rate Schedules constituting agreements to provide transmission service for Boston Edison Company ("BECO"). The Rate Schedules provide for transmission of firm power and energy purchased by BECO as follows:

Agreement	Terms	Commenced	Terminated
1	25 MW from Central Hudson at $0.77/kW/mo.	12/1/88	4/30/89
2	370MW from Public Service E&G at $0.96/kW/mo.	11/1/88	4/30/89
3	125 MW from Public Service E&G at $1.05/kW/mo.	6/1/89	10/31/89

Con Edison has requested waiver of notice requirements so that the Rate Schedules can be made effective and terminated as of the dates indicated.

Con Edison states that a copy of this filing has been served by mail upon BECO.

Comment date: October 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

34. Central Maine Power Co.

[Docket No. ER92-48-000]

Take notice that on October 7, 1991, Central Maine Power Company ("CMP"), tendered for filing the following in the above referenced docket:

1. Sales Agreement dated as of May 1, 1984 (the "BECO Agreement") between CMP and Boston Edison Company;

2. Power Sales Agreement dated as of April 20, 1991 (the "Unitil Agreement") between CMP and Unitil Power Corp;

3. Power Sales and Exchange Agreement (the "BHE Agreement") dated as of April 1, 1985 between CMP and Bangor Hydro-Electric Company;

4. Energy Reservation Charge Rate Schedule, effective as of April 26, 1980.

The BECO, Unitil and BHE Agreements provide for periodic, short-term sales of system energy by CMP to Boston Edison Company, Unitil Power Corp and Bangor Hydro-Electric Company. The BHE Agreement also allows Bangor Hydro to exchange capacity for such energy, if requested by CMP. The Energy Reservation Charge Rate Schedule establishes a cost-based price cap for the negotiated energy reservation charge component of rates for system energy sales under the BECO, Unitil and BHE Agreements and under similar agreements between Northeast Utilities, Public Service Company of New Hampshire, Connecticut Municipal Electric Energy Corporation, Central Vermont Power Corporation, New England Power Company, Green Mountain Power Corporation and Massachusetts Municipal Wholesale Electric Company (CMP Rate Schedules FERC Nos. 65, 69, 70, 71, 72, 74 and 75).

CMP requests that the Commission waive its notice and filing requirements so as to permit the BECO, Unitil and BHE Agreements and the Energy Reservation Charge Rate Schedule to become effective in accordance with their terms.

CMP has served a copy of the filing on each affected customer and state regulatory commission.

Comment date: October 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

35. Northern States Power Co.

[Docket No. ER92-83-000]

Take notice that on October 7, 1991, Northern States Power Company (Minnesota) (NSP-MN or NSP) tendered for filing a Supplement No. 2 to the Interconnection and Interchange Agreement dated November 20, 1990, between NSP-MN and the City of Lake Crystal, Minnesota (Lake Crystal).

Supplement No. 2 to the Interconnection and Interchange Agreement essentially provides for the supply of Supplemental Energy by NSP to Lake Crystal for the purpose of replacing more expensive generation. It maintains the same level of service and rates as the service NSP-MN provided pursuant to the Interconnection and Interchange Agreement dated September 16, 1977 and Supplement No. 1 to the Interchange and Interconnection Agreement also dated January 30, 1984.

NSP requests that Supplement No. 2 to the Interconnection Agreement be accepted for filing effective November 20, 1990, and requests waiver of Commission's notice requirements in order for the Agreement to be accepted for filing on that date. NSP requests that the Agreement be accepted as a supplement to Rate Schedule FERC No. 396, the original rate schedule for service to Lake Crystal.

Comment date: October 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-25344 Filed 10-21-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7267-004 California]

Joseph M. Keating; Availability of Environmental Assessment

October 16, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Tungstar Hydroelectric Project located on the Morgan and Pine Creeks in Inyo County, near Bishop, CA, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3009, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91-25404 Filed 10-21-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-38-000, et al.]

ANR Pipeline Company, et al.; Natural Gas Certificate Filings

October 15, 1991.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP92-38-000]

Take notice that on October 8, 1991, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP92-38-000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act, for authorization to operate an expanded sales delivery point that is currently being constructed pursuant to Section 311 of the Natural Gas Policy Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Comment date: November 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Company

[Docket Nos. CP92-48-000, CP92-49-000, CP92-50-000, CP92-51-000 and CP92-52-000]

Take notice that on October 7, 1991, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP88-6-000, pursuant to Section 7 of the Natural Gas

Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by United and is summarized in the attached appendix.

Comment date: November 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day average day annual MMBtu	Receipt [1] points	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP92-48-000 (10-7-91)	Arkla Energy Marketing Company (Marketer).	209,600 209,600 76,504,000	Various	Various	10-26-88, FTS, Firm.	ST91-10511-000, 9-24-91.
CP92-49-000 (10-7-91)	Total Minatome Corporation (Producer).	104,800 104,800 38,252,000	TX, MS, LA	LA	4-14-89, ITS, Interruptible.	ST91-10422-000, 9-18-91.
CP92-50-000 (10-7-91)	Enron Gas Marketing, Inc. (Marketer).	524,000 524,000 19,260,000	TX, MS, LA, OLA, AL	LA, TX, MS, FL, AL	1-20-89, ITS, Interruptible.	ST91-10510-000, 9-24-91.
CP92-51-000 (10-7-91)	Harbert Oil & Gas Corporation (Producer).	15,720 15,720 5,737,800	MS, LA	MS	7-22-91, ITS, Interruptible.	ST91-10348-000, 9-10-91.
CP92-52-000 (10-7-91)	American Pipeline Co. (Intrastate pipeline).	1,572 1,572 573,780	TX	TX	4-18-91, ITS, Interruptible.	ST91-10494-000, 9-23-91.

[1] Offshore Louisiana is shown as OLA.

[Docket Nos. CP92-7-000 [2], CP92-8-000, CP92-9-000, CP92-10-000, CP92-11-000 and CP92-12-000

3. Northern Natural Gas Company

Take notice that on October 2, 1991, Northern Natural Gas Company (Northern), 1400 Smith Street, P.O. Box 1188, Houston Texas 77251-1188, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the date of the transportation service agreement between Northern and the respective shipper, the contract number of the transportation agreement, function of the shipper, i.e., marketer, producer, end-user, etc., the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket number and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Northern and is included in the attached appendix.

Northern alleges that it would provide the proposed service for each shipper under an executed gas transportation agreement and would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: November 29, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket number trans. agree. (Tran. Agr. No.)	Shipper's name	Shipper's function	Peak day [1] avg. annual	Points of		Start up date rate schedule service type	Related [2] dockets
				Receipt	Delivery		
CP92-7-000, 8-21-91, (20126)	North Canadian Marketing Corp.	Marketer	100,000 75,000 36,500,000	Various existing points.	Various existing points.	8-21-91, IT-1, Interruptible.	ST91-10330-000.
CP92-8-000, 8-27-91, (6431)-	Central Soya Co, Inc.	End-user	4,000 3,000 1,460,000	Various existing points.	IL	8-27-91, IT-1, Interruptible.	ST91-10420-000.
CP92-9-000, 9-11-91, (20232)	Coast Energy Group, Inc..	End-user	88,457 66,343 32,286,805	Off LA & TX	Off LA	9-11-91, IT-1, Interruptible.	ST91-10416-000.
CP92-10-000, 8-8-91, (20139)	Panda Resources, Inc.	Marketer	25,000 18,750 9,125,000	TX	TX	8-8-91, FT-1, Firm..	ST91-10329-000.
CP92-11-000, 8-1-91, (20045)	Texaco Gas Marketing, Inc.	Marketer	30,000 22,500 10,950,000	NM	TX	8/1/91, FT-1, Firm..	ST91-9929-000.
CP92-12-000, 9-1-91, (20043)	Texaco Gas Marketing, Inc	Marketer	50,000 37,500 18,250,000	Various existing points.	TX	9/1/91, IT-1. Interruptible.	ST91-10419-000.

[1] Quantities are shown in MMBtu.

[2] The ST docket indicates that 120-day transportation service was initiated under section 284.223(a) of the Commission's regulations.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary

[FR Doc. 91-25406 Filed 10-21-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD91-1011OT; Oklahoma-10]

State of Oklahoma; Determination Designating Tight Formation

October 16, 1991.

Take notice that on September 30, 1991, the Oklahoma Corporation Commission for the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination to the Commission, pursuant to § 271-703(c)(3) of the Commission's regulations, that the Cherokee Group, located in portions of Beckham, Blaine, Caddo, Custer, Dewey, Roger Mills, and Washita Counties, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). Oklahoma defines the Cherokee Group as the interval which underlies the Excello Shale and overlies the Inola Limestone in the northwest portion of the designated area or the Inola Shale in the southwest portion of the designated area. The notice of determination covers 120 townships within a roughly rectangular area, but excludes T10N, R22W. The rectangular designated area may be identified as follows: T16N, R12W-R26W; T15N, R12W-R26W; T14N, R12W-R26W; T13N, R12W-R26W; T12N, R12W-R26W;T11N, R12W-R26W; T10N, R12W-R21W and R23W-R26W; T9N, R11W-R26W. The notice of determination also contains Oklahoma's findings that the referenced portion of the Cherokee Group meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR, 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91-25403 Filed 10-21-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-00453T; Texas-10 Addition 8]

State of Texas; Determination Designating Tight Formation

October 16, 1991.

Take notice that on October 1, 1991, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Edwards Limestone Formation in portions of LaSalle and Webb Counties, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice covers the following sections of land:

Survey name	Survey No.	Portion	Abstract	County
G C & S F RR	1969	All	A-550	Webb.
W. N. Young	350	All	A-2519	Webb.
S & M	353	All	A-288	Webb.
A B & M	351	All	A-12	Webb.
A B & M	351	All	A-1869	LaSalle.
A. Campbell	352	All	A-2171	Webb.
A. Campbell	352	All	A-1753	LaSalle.
I & G N RR	159	All	A-1526	LaSalle.
Robt. W. P. Carter	28	All	A-863	LaSalle.
Atascosa Co. Sch. Land	299	All	A-663	Webb.
Atascosa Co. Sch. Land	299	All	A-706	LaSalle.
A C H & B	113	All	A-67	LaSalle.
T & N O RR	25	All	A-688	LaSalle.
M. Martin	26	All	A-1298	LaSalle.
M. Martin	22	All	A-1299	LaSalle.
Atascosa Co. Sch. Land	298	W/2	A-705	LaSalle.
Henry Stout	508½	All	A-1541	LaSalle.

The notice of determination also contains Texas' findings that the referenced portions of the Edwards Limestone Formation meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91-25402 Filed 10-21-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES92-1-000]

Citizens Utilities Co.; Application

October 16, 1991.

Take notice that on October 8, 1991, Citizens Utilities Company (Applicant) filed an application with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act

for authority to issue from time to time up to $250,000,000 principal amount of long-term or medium-term debt securities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 5, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–25401 Filed 10–21–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–164–000 and RP91–164–001]

Granite State Gas Transmission, Inc.; Informal Settlement Conference

October 16, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on October 31, 1991, at 10 a.m., (to continue on November 1, 1991, if necessary) at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 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 John J. Keating at (202) 208–0762 or Anja M. Clark at (202) 208–2034.

Lois D. Cashell,

Secretary.

[FR Doc. 91–25405 Filed 10–21–91; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4023–9]

Open Meeting; Technology Innovation and Economics Committee's Focus Group on Environmental Permitting, National Advisory Council for Environmental Policy and Technology

Under Public Law 92–463 (The Federal Advisory Committee Act), EPA gives notice of a meeting of the Focus Group on Environmental Permitting of the Technology Innovation and Economics (TIE) Committee. The TIE Committee is a standing Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT), an advisory committee to the Administrator of the EPA. The TIE Committee and NACEPT are seeking ways to enhance the effectiveness of the environmental management system in the U.S. and makes recommendations to the Administrator that may be identified as a result of NACEPT fact finding and deliberative activities. The meeting will convene on November 6 and 7, 1991, from 9 a.m. to 5 p.m. at the Radisson Park Terrace, 1515 Rhode Island, Avenue, NW., Washington, DC.

The Focus Group on Environmental Permitting is examining the relationship between governmental permitting and compliance policies, and the development and use of pollution prevention technologies and techniques. Pollution prevention is defined as "the use of processes, practices, or products that reduce or eliminate the generation of pollutants." Pollution prevention is thought of by the TIE Committee as the elimination or reduction of pollution sources through product reformulation, process modification, and input substitution. The meeting will draw upon the pollution prevention findings and recommendations of the Focus Group's first report, "Permitting and Compliance Policy: Barriers to U.S. Environmental Technology Innovation," lessons learned in programs and projects by government (federal, state, and local) and the private sector that have been conducted since the completion of fact finding for the first report; and opportunities in permitting and compliance policy under TSCA, FIFRA, and EPCRA.

The Focus Group members share the concern that environmental permitting and compliance systems, and associated regulatory processes, at the federal, state, and local levels create both incentives and disincentives for the development and use of pollution prevention technologies and techniques. Issues being considered by the Focus Group include the following:

1. What are the present incentives and disincentives to pollution prevention in permitting and compliance policies, as practiced by federal, state, and local government?

2. How can permitting systems encourage firms and other regulated organizations to choose a pollution prevention solution to achieve regulatory compliance or otherwise improve environmental performance?

3. How can compliance policies encourage regulated organizations to choose pollution prevention solutions?

4. How can permitting and compliance policies encourage regulated organizations to co-optimize for environmental results and productivity, within the constraint that they must comply with environmental requirements?

The Focus Group invites individuals, firms, and other organizations who can shed light on these subjects and issues to provide statements to the Focus Group prior to the meeting on November 6 and 7. All comments received prior to the meeting (or, by arrangement, subsequent to it) will be made available to the Focus Group. Appropriate statements should include at least the following information:

1. The name, relevant affiliation, address, and phone number of the respondent.

2. Comments about any positive and negative aspects of the permitting and compliance policies that the respondent believes affect the development and use of technologies and techniques for pollution prevention.

3. Illustration of the significance of these comments and suggestions using specific, real case studies, based on the direct experience of the potential respondent, that of their organization, or that of their clients or other associates.

Members of the public wishing to make comments prior to or subsequent to the Washington, DC, meeting are invited to identify themselves to David R. Berg, Director of the Technology Innovation and Economics Committee, no later than October 30, 1991. An outline of key points to be made must be provided by that date, and a complete text is preferred. Please send comments to David R. Berg (A–101–F6). EPA, room 115, 499 South Captiol Street, SW., Washington, DC 20460. The Focus Group

may hold a second public meeting in Washington, DC, early 1992.

The November 6 and 7 meeting (and any future meeting in Washington, DC) will be open to the public. Potential respondents are assured that their written comments will be received and reviewed by the Focus Group. Additional information may be obtained from David R. Berg, Morris Altschuler, or Stephen J. Fleischer at the above address, by calling 202–260–9153, or by written request sent by fax to 202–260–6882.

Dated: October 16, 1991.

Abby J. Pirnie,

NACEPT Designated Federal Official.

[FR Doc. 91–25422 Filed 10–21–91; 8:45 am]

BILLING CODE 6560–50–M

[AD–FRL–4023–6]

National Air Pollution Control Techniques Advisory Committee; Open Meeting

ACTION: Notice of open meeting.

SUMMARY: A meeting of the National Air Pollution Control Techniques Advisory Committee will be held at the Sheraton Inn University Center, Brightleaf Ballroom (Third Floor), 15–501 at Morreene Road, 2800 Middleton Avenue, Durham, North Carolina 27705. The commercial telephone number is (919) 383–8575.

DATES: November 19, 20, and 21, 1991.

FOR FURTHER INFORMATION CONTACT: All meetings are open to the public. Anyone wishing to make a presentation must contact Ms. Marv Jane Clark at the Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, by November 8, 1991. The commercial telephone number is (919) 541–0386, and the FTS number is 629–0386.

SUPPLEMENTARY INFORMATION: The agenda for the meeting is as follows:

November 19 (Tuesday)—9 A.M.

National Emission Standards for Hazardous Air Pollutants (NESHAP) Projects Status Reports (Title III of the Clean Air Act Amendments)

General Provisions
Hazardous Organic NESHAP (HON)
Coke Ovens
Dry Cleaning
Chromium Electroplating

Section 112(g), Status Report on the Development of Guidance for New, Modified, and Reconstructed Sources (Title III of the Clean Air Act Amendments)

Source Category Schedule for Standards, Status Report on the Development of a Prioritized Agenda for Source Category Emission Standards Promulgation

(Title III of the Clean Air Act Amendments)

November 20 (Wednesday)—9 A.M.

Continuation of November 19—as Required

Industrial Process Cooling Towers, Status Report on the Development of the Proposed NESHAP (Title III of the Clean Air Act Amendments)

Medical Waste Incinerators, Status Report on the Development of the Proposed Standards and Emission Guidelines (Section III and Title III of the Clean Air Act Amendments)

Control Techniques Guidelines (CTG) Program (Title I of the Clean Air Act Amendments)

Overview of Program
Plastic Parts Coating CTG Document
Offset Lithography CTG Document

November 21 (Thursday)—9 A.M.

Continuation of November 20—as Required

Control Techniques Guidelines (CTG) Program (Title I of the Clean Air Act Amendments)

Overview of Program
Wood Furniture Coating CTG Document
Autobody Refinishing CTG Document
Batch Processes CTG Document
Volatile Organic Liquid Storage CTG Document

A Lunch break will be taken from 1:00–2:00 p.m. each day.

The dockets containing material relevant to: general provisions (A–91–09), hazardous organic NESHAP on source categories in the chemical industry (process vents: A–90–19, equipment leaks: A–90–20, storage: A–90–21, transfer operations: A–90–22, and wastewater: A–90–23), coke ovens (A–79–15), dry cleaning (A–88–11), chromium electroplating (A–88–02), Section 112(g) (A–91–64), source category schedule for standards (A–91–14), industrial process cooling towers (A–91–65), and medical waste incinerators (A–91–61) are located in the U.S. Environmental Protection Agency, Air Docket, room M1500, 1st floor-Waterside Mall, 401 M Street, SW., Washington, DC 20460. The dockets may be inspected between 8:30 a.m. and 3:30 p.m. on weekdays, and a reasonable fee may be charged for copying.

Dated: October 14, 1991.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 91–25423 Filed 10–21–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[PR Docket No. 91–228; DA 91–1213]

Private Land Mobile Radio Services; Illinois Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for Illinois (Region 13). As a result of accepting the Plan for Region 13, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: October 8, 1991.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: September 30, 1991
Released: October 8, 1991

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On March 29, 1991, Region 13 (Illinois) submitted its public safety plan to the Commission for review. The plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in Illinois. On July 15, 1991, Illinois filed revisions to the plan, based on conversations with the Commission's staff.

2. The Illinois plan was placed on Public Notice for comments on July 31, 1991, 56 FR 37552 (August 7, 1991). The Commission received no comments in this proceeding.

3. We have received the plan submitted for Illinois and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current

and projected mobile communications requirements of the public safety and special emergency entities in Illinois.

4. Therefore, we accept the Illinois Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in Illinois may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 91–25431 Filed 10–21–91; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1865]

Petition for Reconsideration and Clarification of Actions in Rule Making Proceedings

October 16, 1991.

Petitions for reconsideration have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452–1422. Oppositions to these petitions must be filed by November 7, 1991. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Bowdon, Griffin, Hogansville, and Sparta, Georgia) (MM Docket No. 90–309, RM Nos. 7097, 7310 & 7488). Number of Petitions Received: 2.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Wickenburg and Lake Havasu City, Arizona) (MM Docket No. 90–468, RM 7380). Number of Petitions Received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Crozet and Dillwyn, Virginia) (MM Docket No. 90–644, RM Nos. 7543 & 7688). Number of Petitions Received: 1.

Subject: Policies and Rules Concerning Children's Television Programming (MM Docket No. 90–570). Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations. (MM Docket No. 83–670) Number of Petitions Received: 1.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–25355 Filed 10–21–91; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Emergency Management Agency Advisory Board; Open Meeting (Portions May Be Closed)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name: Federal Emergency Management Agency Advisory Board (FAB).

Date: November 18 and 19, 1991.

Place: Federal Emergency Management Agency Emergency Information and Coordination Center, 500 C Street, SW., Washington, DC 20472.

Time: November 18–8:30 a.m. to 5 p.m. November 19–8:30 a.m. to 5 p.m.

Proposed Agenda: On November 18, new and reappointed members will be provided with an overall orientation and update on FEMA and the mission of the agency. The following day, FEMA senior executives will discuss the on-going programs which include the budget and emergency preparedness initiatives.

Purpose: New and reappointed members will be provided with an overall orientation and update on FEMA. FEMA senior executives will discuss the on-going programs which include the budget and emergency preparedness initiatives. Advice will be solicited on the future direction of FEMA.

The meeting will be open to the public with approximately 10 seats available on a "first come, first served" basis. Members of the general public who plan to attend the meeting should contact the Office of the Deputy Director ([202) 646–4221) to reserve a seat on or before November 4, 1991.

The Director has determined that portions of the board meeting may have to be closed to the public in accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. appendix II) because certain sessions may involve the discussion of sensitive and predecisional information. Premature disclosure of this information would significantly impede implementation of proposed agency actions. In addition, some of the discussion may relate solely to the internal rules and practices of this agency.

Minutes of the meeting will be prepared and made available for public viewing (minus those sections of the meeting which may be closed to the public) in the Office of the Deputy Director, Federal Emergency Management Agency, room 830, Washington, DC 20472. Copies of the minutes will be available 30 days after the meeting.

Dated: October 15, 1991.

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 91–25399 Filed 10–21–91; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, on or before November 1, 1991. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–006190–061.

Title: Venezuelan American Maritime Association.

Parties: Consorcio Naviero de Occidente, C.A., King Ocean Service de Venezuela, S.A., Venezuelan Container Service, Maritime Aragua, S.A., American Transport Lines, Inc., Sea-Land Service, Inc., A/S Ivarans Rederi.

Synopsis: The proposed amendment would modify the Agreement's voting procedures to provide that if a member fails to vote in an Agreement telephone poll, and votes sufficient to determine the matter at issue have not been cast, that member shall be deemed to have voted with the majority.

Agreement No.: 203–010099–009.

Title: International Council of Containership Operators.

Parties: American President Companies, Ltd., A.P. Moller (Maersk Line), Ben Line Containers Ltd., Blue Star Line Ltd., Compagnie Generale Maritime, Compagnie Maritime Belge S.A., Hamburg-Sudamerikanische, Dampfschiffahrtsgesellschaft, Eggert & Amsinck (Columbus Line).

Synopsis: The proposed amendment deletes Evergreen International Corp., as member of the Agreement.

Agreement No.: 202–010776–062

Title: Asia North America Eastbound Rate Agreement ("ANERA").

Parties: American President Lines, Ltd., Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk Line, Mitsui O.S.K. Lines, Ltd., Neptune Orient Lines, Ltd., Nippon Yusen Kaisha Line, Sea-Land Service, Inc.

Synopsis: The proposed amendment would (1) clarify the types of information the parties may exchange with the Transpacific Discussion Agreement ("TDA") and the

Transpacific Stabilization Agreement ("TSA"); (2) permit the parties, or any group of them, to caucus to clarify their positions prior to communications with TDA or TSA; (3) authorize administrative functions to facilitate information transfers and; (4) provide that a party which joins ANERA and retains any pre-existing individual service of loyalty contracts shall be deemed to have waived its rights to participate in any ANERA service contract which became effective prior to the effective date of the joining party's ANERA membership.

Agreement No.: 202–010776–063.

Title: Asia North America Eastbound Rate Agreement.

Parties: American President Lines, Ltd., Kawasaki Kisan Kaisha, Ltd., A.P. Moller-Maersk Line, Mitsui O.S.K. Lines, Ltd., Neptune Orient Lines, Ltd., Nippon Yusen Kaisha Line, Sea-Land Service, Inc.

Synopsis: The proposed modification would permit the parties to reduce the number of arbitrators to hear an appeal of Neutral Body decisions from three to one, and provide direction to the Neutral Body in the investigation of alleged malpractices where there is ambiquity in the law or conference publications, or where an inequitable situation exists.

Agreement No.: 202–010776–064.

Title: Asia North America Eastbound Rate Agreement.

Parties: American President Lines, Ltd., Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk Line, Mitsui O.S.K. Lines, Ltd., Neptune Orient Lines, Ltd., Nippon Yusen Kaisha Line, Sea-Land Services, Inc.

Synopsis: The proposed modification amends appendix B of the Agreement, to provide that the Executive Committee be composed of two representatives from each party.

Agreement No.: 213–010972–024.

Title: Three Lines' Far East-Atlantic Coast Space Charter and Sailing Agreement.

Parties: Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha ("NYK").

Synopsis: The proposed amendment would permit NYK to charter space to Neptune Orient Lines, Ltd. from the space allocated to NYK under the Agreement. The parties have requested a shortened review period.

Agreement No.: 203–010977–013.

Title: Hispaniola Discussion Agreement.

Parties: United States Atlantic and Gulf/Hispaniola Steamship Freight Association, Zim Israel Navigation Co., Tropical Shipping and Construction Co. Ltd., Tecmarine Lines, Antillean Marine Shipping Corporation, Seaboard Marine Ltd.

Synopsis: The proposed amendment would admit Afram Lines as a party to the Agreement. The parties have requested a shortened review period.

Agreement No.: 203–011075–017.

Title: Central American Discussion Agreement.

Parties: United States/Central America Liner Association, Nexos Line, Nordana Line, Inc., Concorde Shipping, Inc., Tropical Shipping and Construction Co. Limited, Central America Shippers, Inc., Great White Fleet, Ltd., Naviera Consolidada S.A., Thompson Shipping Co., Ltd., Norwegian American Enterprises, Inc., King Ocean Central America, S.A.

Synopsis: The proposed amendment deletes Empress Naviera Santa as a party to the Agreement.

By order of the Federal Maritime Commission.

Dated: October 16, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–25345 Filed 10–21–91; 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; Notice of 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:

Royal Caribbean Cruises Ltd. and Monarch of the Seas, Inc., 1050 Caribbean Way, Miami, FL 33132.

Vessel: MONARCH OF THE SEAS

Dated: October 16, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–25346 Filed 10–21–91; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 91–45]

Safbank Line Limited v. Agritek Americas Corp; Filing of Complaint and Assignment

Notice is given that a complaint filed by Safbank Line Limited ("Complainant") against Agritek Americas Corp. ("Respondent") was served October 16, 1991. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. 1709(a)(1), by refusing to pay applicable ocean freight on 2,170 cases of foreign bait California squid shipped from Houston, Texas to Capetown, South Africa under bill of lading dated January 19, 1990.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of materials fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by October 16, 1992, and the final decision of the Commission shall be issued by February 15, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 91–25347 Filed 10–21–91; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 91–46]

Safbank Line Limited v. Nefra Trading Holland Pohl Chemie GMBH; Filing of Complaint and Assignment

Notice is given that a complaint filed by Safbank Line Limited ("Complainant") against Nefre Trading Holland Pohl Chemie GmbH ("Respondent") was served October 16, 1991. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. 1709 (a)(1), by stopping payment on its checks and refusing to pay ocean freight on cargo shipped from Houston, Texas to Durban, South Africa.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper

showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by October 16, 1992, and the final decision of the Commission shall be issued by February 15, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 91-25348 Filed 10-21-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

October 16, 1991.

BACKGROUND: Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR § 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public)

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics. Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829). OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503 (202-395-7340).

Final approval under OMB delegated authority of the extension, with revisions, of the following reports:

1. Report title: Weekly Report of Assets and Liabilities of Large U.S. Branches and Agencies of Foreign Banks.

Agency form number: FR 2069.

OMB Docket Number: 7100-0030.

Frequency: Weekly.

Reporters: Large U.S. branches and agencies of foreign banks.

Annual reporting hours: 12,376.

Estimated average hours per response: 3.5.

Number of respondents: 68.

Small businesses are not affected.

General description of report:

This information collection is voluntary [12 U.S.C. 3105] and is given confidential treatment [5 U.S.C. 552(b)(4) and (b)(8)].

This report collects current balance sheet information from large U.S. branches and agencies of foreign banks. The proposed revisions include making minor adjustments to the reporting panel to improve the representativeness of the sample and adding a new memorandum item on highly leveraged transactions (HLTs) to be collected once a month. The data are used together with similar data collected from domestically chartered banks for construction of weekly estimates of bank credit, sources and uses of bank funds, and a balance sheet for the banking system as a whole. The data also are used for analyzing banking and monetary conditions.

2. *Report title:* Monthly Survey of Selected Deposits and the Annual Supplement to the Monthly Survey of Selected Deposits.

Agency form number: FR 2042 and FR 2042a.

OMB Docket Number: 7100-0066.

Frequency: Monthly and annually.

Reporters: Commercial and savings banks.

Annual reporting hours: 28,175.

Estimated average hours per response: 1.00 to 4.00.

Number of respondents: 575.

Small businesses are affected.

General description of report:

This information collection is voluntary [12 U.S.C. 248(a)(2)] and is given confidential treatment [5 U.S.C. 552(b)(4)].

The reports collect detailed information on amounts, offering rates, and fees on various types of retail deposits from a stratified sample of BIF-insured commercial and savings banks. The proposed revisions are designed in part to make the reports compatible with recent changes in Regulation D and the corresponding reduction in item detail on the Report of Transaction Accounts, Other Deposits, and Vault Cash (FR 2900). In addition, other changes are proposed to strengthen the Federal Reserve's ability to interpret the reported interest rate data. The Federal Reserve uses data from the FR 2042 and FR 2042a in a number of ways, including construction and interpretation of the monetary aggregates, measuring elasticities in money demand equations, and assessing the changing behavior of banks in pricing deposit accounts.

Board of Governors of the Federal Reserve System, October 16, 1991

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-25377 Filed 10-21-91; 8:45 am]

BILLING CODE 6210-01-M

Farmers National Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 12, 1991.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Farmers National Bancorp, Inc., Newville, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers National Bank of Newville, Newville, Pennsylvania.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. The First National Bank of Artesia Employee Stock Ownership Plan, Artesia, New Mexico; to become a bank holding company by acquiring 27.35 percent of the voting shares of First Artesia Bancshares, Inc., Artesia, New Mexico, and thereby indirectly acquire The First National Bank of Artesia, Artesia, New Mexico.

Board of Governors of the Federal Reserve System, October 16, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-25374 Filed 10-21-91; 8:45 am]

BILLING CODE 6210-01-F

Gary Marshik, et al.; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than November 7, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Gary Marshik, Canton, South Dakota; to acquire an additional 4.24 percent of the voting shares of Canton Bancshares, Inc., Canton, South Dakota, for a total of 20.0 percent, and thereby indirectly acquire First American Bank, Canton, South Dakota.

Board of Governors of the Federal Reserve System, October 16, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-25375 Filed 10-21-91; 8:45 am]

BILLING CODE 6210-01-F

U.S. Trust Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 12, 1991.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. U.S. Trust Corporation, New York, New York; to engage *de novo* through its subsidiary, U.S. Trust Company Limited, New York, New York, in trust company activities pursuant to § 225.25(b)(3); and data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 16, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-25376 Filed 10-21-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Environmental Protection Agency

Risk Assessment Practices in the Federal Government

AGENCY: Environmental Protection Agency (EPA) and the Department of Health and Human Services (DHHS)

ACTION: Notice of meeting.

SUMMARY: Earlier this year, a high-level Federal interagency Working Group on Risk Assessment was formed to examine opportunities for collaboration on methods, research, and other issues of interest to agencies engaged in risk assessment. The Working Group is focusing on improvement of scientific methods, not on social policy questions relating to risk management (i.e., regulation of risk). The Working Group is chaired by F. Henry Habicht II, Deputy Administrator, EPA. A Technical Subcommittee, under the direction of Dr. Frank Young, Deputy Assistant Secretary for Health, Science, and Environment, DHHS, is providing support on a number of specific risk assessment issues of interest to the Working Group. In order to initiate a process for members of the interested public to provide their views to the agencies, the Working Group is sponsoring a public meeting on risk assessment practices in the Federal government, at which Mr. Habicht and Dr. Young, and other Federal participants, will present the proposed agenda for the Working Group and its Subcommittee. They are requesting comments from members of the public on their proposed agenda and on the selection of priority issues for interagency consideration, including identification of areas where additional coordination and harmonization should be developed.

DATES: The meeting will be held on November 19, 1991, from 9 a.m. until 5 p.m. Members of the public are invited to attend.

To register to attend the meeting, contact EPA's contractor, Eastern Research Group (ERG), 6 Whittemore Street, Arlington, MA 02174, at 617/641-5385, by November 15, 1991. Registration will also be held on the day of the meeting from 8 a.m. to 9 a.m. Seating is limited and advance registration is recommended.

Individual wishing to make oral presentations (limited to 5 minutes) should submit their names, affiliations, addresses, and a general topic area for their comments to Heike Milhench, ERG, at the above address, by November 15, 1991.

Written comments (not more than 5 pages) will be accepted by ERG until December 4, 1991. Comments should be mailed to Heike Milhench, at the above address, or FAXed to her at 617/648-3638.

Because of the limited time for oral presentation, presenters will be accommodated to the extent possible; all presentations, whether oral or written, will be given full consideration by the Working Group. A full public record will be created to contain all written comments submitted to the Working Group. Individuals and groups with similar comments are asked to consolidate comments into single remarks to the extent possible.

ADDRESSES: The meeting will be held at the National Academy of Sciences in Washington, DC. Attendees should use the entrance at 2100 C Street NW. The meeting is from 9 a.m. to 5 p.m., with registration from 8 a.m. to 9 a.m.

FOR FURTHER INFORMATION CONTACT: Dr. William H. Farland, U.S. Environmental Protection Agency, 202/260–7315, or Dr. Frank Young, Department of Health and Human Services, 202/245–6811.

SUPPLEMENTARY INFORMATION: Earlier this year, a high-level Federal interagency Working Group on risk assessment was formed to examine opportunities for collaboration on methods and research. The Group is particularly interested in harmonization of approaches and in reducing uncertainty in risk assessment. The Working Group is charged with improving scientific methods, and will not take up social policy questions relating to regulation of risk. The Working Group is chaired by F. Henry Habicht II, Deputy Administrator of EPA, with a Technical Subcommittee chaired by Dr. Frank Young of the DHHS. The Working Group recognizes that risk assessment is an issue of great interest to many outside the Federal government as well as to those within. They wish to know the views of the interested public on the selection of priority issues for interagency consideration, and are seeking comment on their agenda. The public meeting will initiate a process for the Working Group to hear from members of the public; however, the Working Group expects to continue public discussions on these topics.

The purpose of the meeting is to provide a forum for the Federal government to inform the general public about the Working Group's activities with regard to risk assessment, and to obtain advice from the public about directions for future work, especially with regard to: Current and potential issues for review by interagency committees; appropriate areas for interagency coordination and cooperation; and changes that may be necessary, across Federal agencies, to enable and encourage coordination and harmonization of risk assessment practices. The five areas for study that are already on the committees' agenda and some key questions are outlined below to facilitate dialogue:

(1) To examine the current scientific and policy approaches of Federal agencies engaged in the origination and/or use of cancer risk assessments, the Working Group is currently focusing on implementation of the 31 principles developed by the Office of Science and Technology Policy (OSTP) and published in the **Federal Register** (50 FR 10371, March 14, 1985) under the title: "Chemical Carcinogens; A Review of the Science and Its Associated Principles, February 1985." Some key questions are:

To what extent are the OSTP principles used across government, and are current uses appropriate?

Should the principles be updated and, if so, in what manner?

(2) To identify needs and opportunities for Federal research in the area of health risk assessments. Some key questions are:

What Federal research programs are being conducted in health risk assessment?

How are research efforts distributed among the components of health risk assessments, such as hazard identification, dose-response assessment, exposure assessment, and risk characterization?

What endpoints are the focus of those research programs?

What collaborative research efforts exist among Federal agencies?

What are the most important research needs and opportunities in the field of health risk assessment?

(3) To review and develop scientific principles for risk assessments with non-cancer endpoints, specifically for neurotoxicologic and reproductive effects. Some key questions are:

How do we define neurotoxicity?

What constitutes an adverse effect within the context of neurotoxicity?

How can scientifically based, rational assessments best be made for chemical and physical agents (e.g., radiation) that may affect human reproduction and development?

What experimental models provide the most useful information and predictive capabilities for assessing effects on the nervous system, reproductive system, and on development?

What are the most meaningful approaches for determining the potential effects of chemical and physical agents on reproduction and development?

(4) To inventory existing databases and registries that could be used to support risk assessment activities; to recommend the development of additional databases or methods to enhance existing databases; and to recommend consistent methods for collecting, reporting, and entering data into databases and registries for risk assessment purposes. Some key questions include:

How do we prevent inadvertent duplications of existing database inventories?

Is there a need for standardization among databases for risk assessments?

Would enhanced access to non-United States databases be useful to the Government?

What data needs for risk assessment are yet unmet?

(5) To review the risk assessment-related activities that use models for estimating exposure and pathway analyses to provide source-to-dose estimates and assess the need for Federal guidance in those areas. Key questions include:

What are the general practices and methods used by the various Federal agencies in developing exposure assessments?

What areas of the exposure assessment process have the largest uncertainties, and how may those uncertainties be minimized?

What special guidance should be developed for harmonization and improved coordination of exposure assessment activities within Federal agencies?

Examples of additional areas for future consideration include:

(1) Harmonization and coordination of risk assessment efforts with the Federal government, including identification of areas most fruitful for coordination of Federal risk assessment practices; differing philosophies within agencies that drive different risk assessment practices; and appropriate areas for coordination of default positions.

(2) Development of data and methods for assessing risks to ecological systems. The questions include:

Given the often uncertain and qualitative nature of ecological impacts, what kinds of data and methodologies are most appropriate for the development of useful risk assessments?

To what extent should values or benefits that impact longevity and quality of life, in addition to human health and welfare, be relevant in evaluating ecosystem risks?

What kinds of techniques are appropriate for quantifying the importance of these values relative to human health and welfare?

(3) The Working Group has undertaken a preliminary comparison of methods used to assess risks to man-made systems and structures (i.e., engineering risk assessment) and health risk assessment, in an attempt to improve risk communication and harmonize the use of risk assessment across disciplines. To accomplish that goal, a discussion of terms used in risk

analysis, an identification of alternative risk objectives and endpoints, and examples of methods used in the practice of engineering risk assessments are being examined.

Public comment is solicited on both current and proposed issues before the Working Group, and the questions related to those issues. Comment is also solicited on additional topics of particular interest to these interagency groups concerned with improvement and harmonization of risk assessment methods.

Dated: October 15, 1991.

F. Henry Habicht II,

Deputy Administrator, U.S. Environmental Protection Agency.

Dated October 16, 1991.

James O. Mason,

Assistant Secretary for Health, Department of Health and Human Services.

[FR Doc. 91-25440 Filed 10-21-91; 8:45 am]

BILLING CODE 4160-17-M

Alcohol, Drug Abuse, and Mental Health Administration

Suspension of a Laboratory Which No Longer Meets Minimum Standards to Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Notice

SUMMARY: The Department of Health and Human Services routinely publishes in the **Federal Register** a list of laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11986) dated April 11, 1988. This notice informs the public that, effective October 15, 1991, the following laboratory's certification is suspended: HealthCare/Preferred Laboratories, 24451 Telegraph Road, Southfield, MI 48034, 800-225-9414 (outside MI)/800-328-4142 (MI only).

FOR FURTHER INFORMATION CONTACT: Drug Testing Section, Division of Applied Research, National Institute on Drug Abuse, room 9-A-53, Telephone: 301-443-6014, 5600 Fishers Lane, Rockville, Maryland 20857.

Charles R. Schuster,

Director, National Institute on Drug Abuse.

[FR Doc. 91-25459 Filed 10-21-91; 8:45 am]

BILLING CODE 4160-20-M

Public Health Service

Subcommittee of the National Vaccine Advisory Committee (NVAC), Public Meeting

AGENCY: Office of the Assistant Secretary for Health, HHS.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health (OASH) are announcing the forthcoming meeting of a newly-formed NVAC Subcommittee on the Vaccine Injury Compensation Program .

DATES: Date, Time and Place: November 8, 1991, at 9 a.m., Parklawn Building, Chesapeake Conference Room, Third Floor, 5600 Fishers Lane, Rockville, Maryland. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Kenneth J. Bart, M.D., Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program Office, 5600 Fishers Lane, Parklawn Building, room 13A-53, Rockville, Maryland 20857, (301) 443-0715.

Agenda: Open Public Hearing: Interested persons may formally present data, information, or views orally or in writing on issues to be discussed by the Subcommittee or or any of the duties and responsibilities of the Subcommittee as described below. Because of limited seating, those desiring to make such presentations should make a request to the contact person before November 1, and submit a brief description of the information they wish to present to the Subcommittee. Those requests should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. A maximum of 10 minutes will be allowed for a given presentation. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make an oral presentation at the conclusion of the meeting, if time permits, at the Chairperson's discretion.

Open Subcommittee Discussion: The Subcommittee will discuss the Institute of Medicine's (IOM) report entitled "Adverse Effects of Pertussis and Rubella Vaccines" and new scientific knowledge accumulated since the passage of the compensation legislation and its implication for the National Vaccine Injury Compensation Program. The agenda will be announced at the beginning of the meeting.

A list of Subcommittee members and the charter of the Advisory Committee will be available at the meeting. Those unable to attend the meeting may request this information from the contact person.

Dated: October 16, 1991.

Kenneth J. Bart,

Executive Secretary, NVAC.

[FR Doc. 91-25410 Filed 10-21-91; 8:45 am]

BILLING CODE 4160-17-M

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting, National Kidney and Urologic Diseases Advisory Board and the Research Subcommittee and the Health Care Issues Subcommittee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board on November 3-5, 1991. The Research Subcommittee and the Health Care Issues Subcommittee meetings will be held on November 3, to discuss the relevant research and health care issues. The full Board meeting will be held on Monday, November 4, from 8 a.m. to approximately 5 p.m. to discuss the Board's activities and the development of the long-range plan to combat kidney and urologic diseases. On Tuesday, November 5, the Board will sponsor a workshop on the role of ace inhibitors and calcium channel blockers in the treatment of hypertension in patient with polycystic kidney disease. All meetings will be held at the Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202. All meetings, will be open to the public. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Dr. Ralph Bain, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: October 15, 1991.

Raymond Bahor,

Acting Committee Management Officer, NIH.

[FR Doc. 91-25363 Filed 10-21-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-919-02-4830-02-ADVB]

Northern Alaska Advisory Council

The Northern Alaska Advisory Council will hold a public meeting Thursday, November 21, 1991, at the training rooms of the Bureau of Land Management's Fairbanks Office Building in Fairbanks, Alaska. The public meeting will start at 8:30 a.m. and end at 5 p.m. Public comment will be taken from 2 p.m. to 3 p.m.; written comments may be submitted.

The council will hear BLM reports on the (1) subsistence program, (2) bonding regulations for mining operations, (3) cultural and recreation programs, (4) Rendezvous '92 and (5) hazardous materials program. Council action topics will be (1) access issues in the Steese/White Mountains District and (2) planning issues in the Kobuk District's Seward/Noatak Resource Management Plan.

For information, contact the Public Affairs Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709, telephone (907) 474–2231.

Dated: October 16, 1991.

Helen M. Hankins,

Designated District Manager.

[FR Doc. 91–25391 Filed 10–21–91; 8:45 am]

BILLING CODE 4310-JA-M

[CO-050-4333-13]

Road Closure

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency Closure to Motorized Vehicle use on 3760 acres of BLM lands to protect human life and natural resource values.

SUMMARY: Notice is hereby given in accordance with 43 CFR 8341.2 that, the following public lands have been closed to motorized vehicle travel: the area south of Monte Vista, Colorado and west of the Monte Vista National Wildlife Refuge and east of BLM Road 5100 in T.38N., R.7E., Sections 34 & 35 and T.37N., R.7E., Sections 2, 3, 10, 11, 14 and 15.

DATES: Closure to become effective immediately and continue until May 31, 1992.

FOR FURTHER INFORMATION CONTACT: Joe Kraayenbrink at (719) 589–4975.

ADDRESSES: Comments can be directed to: Area Manager, 1921 State Street, Alamosa, CO 81101 (719–589–4975) or Canon City District Manager, BLM, P.O. Box 2200, Canon City, CO 81215–2200, (719–275–0631).

SUPPLEMENTARY INFORMATION: This closure will eliminate an extremely dangerous situation where hunters "line up" to shoot elk as they leave the refuge in the early morning. The closure will also protect the fragile vegetation and highly erodible soils from the adverse effects of vehicle travel during the wet months of the year.

This action does not effect hunting use in the area but is intended to make the area safer for hunters and the general public, and protect the natural resources from damage during the winter months when soils are often wet.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 91–25340 Filed 10–21–91; 8:45 am]

BILLING CODE 4310-JB-M

[WY-930-4214-10; WYW 35627]

Termination of Segregative Effect of Withdrawal Application; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action notifies the public that the segregative effect will terminate on October 20, 1991 as to 4,350 acres of public land included in a withdrawal application.

EFFECTIVE DATE: October 20, 1991.

FOR FURTHER INFORMATION CONTACT: Duane Feick, Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming 82001, (307) 775–6127.

SUPPLEMENTARY INFORMATION: Pursuant to the regulations contained in 43 CFR 2310.2–1(e), at 9 a.m. on October 20, 1991, the following described lands will be relieved of the segregative effect of withdrawal application WYW 35627.

Sixth Principal Meridian, Wyoming

T. 40 N., R. 116 W.,
  Sec. 27, SW¼NW¼;
  Sec. 30, lot 6;
  Sec. 34, lot 8.
T. 40 N., R. 117 W.,
  Sec. 24, lot 6;
  Sec. 25, lots 1, 3, and 4.

All unreserved public lands in the following townships:

T. 41 N., R. 116 W.
T. 42 N., R. 116 W.
T. 41 N., R. 117 W.

The areas described aggregate 4,350 acres in Teton County.

Dated: October 16, 1991.

F. William Eikenberry,

Associate State Director, Wyoming.

[FR Doc. 91–25382 Filed 10–18–91; 10:15 am]

BILLING CODE 4310-22-M

[WY-930-4214-10; WYW 47613]

Termination of Segregative Effect of Withdrawal Application; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action notifies the public that the segregative effect will terminate on October 20, 1991 as to 42,635.85 acres of public lands included in an application for withdrawal of lands in aid of their classification under the Desert Land Entry laws.

EFFECTIVE DATE: October 20, 1991.

FOR FURTHER INFORMATION CONTACT: Duane Feick, Wyoming State Office, 2515 Warren Avenue, Box 1828, Cheyenne, Wyoming 82001, (307)775–6127.

SUPPLEMENTARY INFORMATION: Pursuant to the regulations contained in 43 CFR 2310.2–1(e), at 9 a.m. on October 20, 1991, the following described lands will be relieved of the segregative effect of withdrawal application WYW 47613.

Sixth Principal Meridian, Wyoming

T. 48 N., R. 92 W.,
  Sec. 18, lots 2 and 4;
  Sec. 19, lot 1.
T. 47 N., R. 92½ W.
  Sec. 1, lot 1.
T. 48 N., R. 92½ W.
  Sec. 1, lots 1–6, SW¼NE¼, W½SE¼;
  Sec. 12, lots 1–4, W½E½;
  Sec. 13, lots 1–4, NW¼NE¼, S½NE¼, SE¼;
  Sec. 24, all;
  Sec. 25, lots 1–4, W½NE¼, SW¼SE¼.
T. 47 N., R. 93 W.,
  Secs. 1 and 2;
  Sec. 3, lots 5–6, SE¼NE¼, E½SE¼;
  Sec. 11, NE¼, N½NW¼, SE¼NW¼, SE¼;
  Sec. 12, lots 1–6, NW¼NE¼, NW¼, NE¼SW¼, W½SW¼;
  Sec. 13, lots 1–4, W½W½;
  Sec. 14, E½;
  Sec. 23, lots 1–4, NE¼, NW¼SE¼;
  Sec. 24, lots 1–4;
  Sec. 26, lot 1.
T. 48 N., R. 93 W.,
  Secs. 1–3, 10–5, 22–24;
  Sec. lots 1–2, N½, SW¼, N½SE¼;
  Secs. 26 and 35;
  Sec. 36, lots 1–5, W½.
T. 48 N., Rs. 92½ and 93 W., W½ of Tract 37.
T. 49 N., R. 93 W.,
  Sec. 1, SW¼SW¼;
  Sec. 2, lot 3, S½NW¼, S½;
  Secs. 3–5;
  Sec. 6, lots 6–7, E½SW¼, SE¼;
  Secs. 7–11, 14–18;

Sec. 19, lots 1–3, NE¼, E½NW¼, NE¼SW¼, N½SE¼;
Sec. 20, N½, N½S½;
Secs. 21–23, 26–27;
Sec. 28, NE¼, N½NW¼, SE¼NW¼, N½SE¼;
Secs. 34 and 35.
T. 50 N., R. 83 W.,
Sec. 4, lots 1–5, lot 10, SW¼NW¼, and NW¼SW¼;
Sec. 5, all;
Sec. 8, N½, SE¼;
Sec. 9, lots 1–4, and 6;
Sec. 17, N½NE¼, SW¼NE¼, SW¼, W½SE¼;
Sec. 20, N½, E½SE¼;
Sec. 21, lot 1, W½W½, SE¼SW¼
Sec. 28, lot 2, W½E½, W½;
Sec. 29, E½E½;
Sec. 32, E½E½;
Sec. 33, W½NE¼, NW¼, S½;
Sec. 34, NW¼SW¼, S½S½.
T. 51 N., R. 93 W.
Sec. 6, lots 1–2, S½NE¼;
Sec. 17, N½SW¼, SW¼SW¼;
Sec. 18, lots 3–4, E½SW¼, SE¼;
Sec. 19, lots 1–3, NE¼, E½NW¼, NE¼SW¼, N½SE¼;
Sec. 20, N½NW¼, SW¼NW¼, NW¼SW¼;
Sec. 28, lot 4;
Sec. 29, S½S½;
Sec. 32, all;
Sec. 33, lots 3–4, W½W½.
T. 52 N., R. 93 W.,
Sec. 30, lots 11 and 14;
Sec. 31, W½NE¼, E½NW¼, NE¼SW¼.
T. 49 N., R. 94 W.,
Sec. 1, S½;
Sec. 12, all;
Sec. 13, NE¼, N½SE¼, SE¼SE¼;
T. 51 N., R. 94 W.,
Secs. 14–14;
Sec. 15, lots 2–4, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Secs. 22–24.

The areas described aggregate 42,635.85 acres in Washakie and big Horn Counties.

Dated: October 16, 1991.

F. William Eikenberry,

Associate State Director, Wyoming.

[FR Doc. 91–25383 Filed 10–18–91; 10:15 am]

BILLING CODE 4310–22–M

National Park Service

Blue Ridge Parkway, North Carolina; Notice of Intent to Prepare an Environmental Statement

AGENCY: National Park Service, Interior

ACTION: Notice of intent.

SUMMARY: In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91–190, the National Park Service (NPS), Blue Ridge Parkway, is preparing an Environmental Impact Statement (EIS) to assess the impacts of alternative management strategies for the park, which will be described in a General Management Plan (GMP). A range of alternatives will be formulated for resource protection, visitor use and interpretation, facilities development and operations.

Persons wishing to provide input to the scoping process for the GMP and EIS should address comments to the Superintendent, Blue Ridge Parkway, 200 BB and T Building, One Pack Square, Asheville, North Carolina 28801. Comments should be received no later than 60 days from the publication of this notice. For further information, contact the Superintendent, Blue Ridge Parkway, at the above address.

The responsible official is James Coleman, Regional Director, Southeast Regional Office, National Park Service, 75 Spring Street, SW., Atlanta, Georgia 30303. The draft GMP and EIS are expected to be completed and available for public review by late 1992. The final GMP, EIS and Record of Decision are expected to be completed in July 1993.

Dated: September 26, 1991.

Frank Catroppa,

Acting Regional Director; Southeast Region.

[FR Doc. 91–25418 Filed 10–21–91; 8:45 am]

BILLING CODE 4310–70–M

Wheeling Heritage Area

AGENCY: National Park Service; Wheeling Heritage Area—Development Action Plan Alternatives.

ACTION: Release of Alternatives Newsletter.

SUMMARY: This notice announces the public release of a newsletter developed by the City of Wheeling with the consultant services of Lane Frenchman & Associates which outlines three alternative approaches to the conservation, interpretation, and economic revitalization of Wheeling's natural and cultural heritage resources. This newsletter was released the first week of October 31, 1991 for a thirty (30) day period of review and comment.

FOR FURTHER INFORMATION CONTACT: Mary Whelchel Konieczny, Outdoor Recreation Planner, Mid-Atlantic Regional Office, Philadelphia, 19106; 215–597–7946.

SUPPLEMENTARY INFORMATION: The Wheeling Draft Concept Plan was released in November, 1990, and documents Wheeling's significant historic resources, historic themes, and community concerns and goals. Public workshops were an integral part of the planning process, allowing the local community to articulate its vision for Wheeling's future growth and the management of its heritage resources. The Concept Plan was transmitted to Congress in July of 1991 with the community's recommendation to pursue the concept of a "heritage area" approach to the conservation and interpretation of its historic resources. The final planning phase, outlined in the Development/Action Plan, will detail a strategy for the conservation of heritage resources within the context of community growth.

Anthony M. Corbisiero,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 91–25417 Filed 10–21–91; 8:45 am]

BILLING CODE 4310–70–M

Wrangell-St. Elias National Park and Preserve; Mining Plans of Operation

SUMMARY: Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of title 36 Code of Federal Regulation part 9 subpart A, Mark Fales and Larry James have filed a plan of operations in support of proposed mining operations on lands embracing the Big Eldorado Creek, Tony No. 1, Rocky No. 1, and Ole No. 1 through No. 5, placer claims within the Wrangell-St. Elias National Park and Preserve.

ADDRESSES: This plan is available for inspection during normal business hours at the following location: Alaska Regional Office—Minerals Management Division, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503–2892.

FOR FURTHER INFORMATION CONTACT: Floyd Sharrock of the National Park Service, Minerals Management Division at the address given above; telephone (907) 257–2626.

David E. Ames,

Acting Regional Director.

[FR Doc. 91–25421 Filed 10–21–91; 8:45 am]

BILLING CODE 4310–70–M

Civil War Sites Advisory Commission; Meetings

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting of the Civil War Sites Advisory Commission.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. appendix (1988), that a meeting of the Civil War Sites Advisory Commission will be held on November 21, 1991 in Washington, DC.

The meeting will begin at 9 a.m. and conclude at 4 p.m.

This meeting constitutes the fourth meeting of the Commission. The Commissioners will discuss details of the workplan for the Commission Study. Ms. Frances Kennedy has been invited to address the Commission.

Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. Anyone may file with the Board a written statement concerning matters to be discussed.

Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Dr. Marilyn Nickels, Interagency Resources Division, P.O. Box 37127, Washington, DC 20013–7127 (telephone 202–343–9549). Draft summary minutes of the meeting will be available for public inspection about 8 weeks after the meeting, in room 6111, 1100 L Street, NW., Washington, DC.

Dated: October 15, 1991.

Lawrence E. Aten,

Acting Executive Director and Chief, Interagency Resources Division.

[FR Doc. 91–25419 Filed 10–21–91; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 8, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by November 6, 1991.

Patrick Andrus,

Acting Chief of Registration, National Register.

ARKANSAS

Benton County

Oklahoma Row Hotel Site, AR 94 Spur at shore of Beaver Lake, Monte, Ne, 91001668

FLORIDA

Orange County

Mitchill—Tibbetts House, 21 E. Orange St., Apopka, 91001661

KENTUCKY

Allen County

Allen County Poor Farm, 3540 Holland Rd., Scottsville, 91001662

Ballard County

Barlow House, Jct. of Broadway and S. Fifth St., Barlow, 91001663

Floyd County

Middle Creek Battlefield, 3 mi. W of Prestonsburg at jct. of KY 114 and KY 404, Prestonsburg vicinity, 91001665

Jefferson County

Green Tree Manor Residential Historic District (Louisville and Jefferson County MRA), 107 Fenley Ave., Louisville, 91001664

Leslie County

McIntosh, Roderick, Farm, S of Dry Hill—McIntosh Rd. on confluence of McIntosh and Cutshin Crs., Dryhill vicinity, 91001666

Martin County

Himler, Martin, House, W of jct. of KY 40 and KY 2031, Beauty, 91001667

LOUISIANA

Beauregard Parish

First United Presbyterian Church, Jct. of Pine and N. Port Sts., DeRidder, 91001659

Madison Parish

Tallulah Book Club Building, 515 Dabney St., Tallulah, 91001660

Tallulah Men's Club Building, 108 N. Cedar St., Tallulah, 91001658

NEW YORK

Cattaraugus County

Buffalo, Rochester & Pittsburgh Railroad Station, 227 W. Main St., Springville, 91001669

Portville Free Library, 2 N. Main St., Portville, 91001671

Clinton County

Church of St. Dismas, the Good Thief, Clinton Correctional Facility, Cook St., Dannemora, 91001673

Monroe County

Webster Baptist Church, 59 South Ave., Webster, 91001672

Oneida County

Holland Patent Stone Churches Historic District, Roughly bounded by Main St., Park Ave., Park Pl. and Willow Cr., Holland Patent, 91001670

Oswego County

Hamilton Farmstead (Mexico MPS), 5644 Hamilton St., Mexico, 91001657

Steuben County

Delaware, Lackawanna & Western Railroad Station, Jct. of Steuben St. and Victory Hwy., Painted Post, 91001674

Ulster County

Poppletown Farmhouse, Jct. of Old Post Rd. and Swarte Kill Rd., Esopus, 91001656

VERMONT

Chittenden County

Bates, Martin M., Farmstead (Agricultural Resources of Vermont MPS), Huntington Rd. N of Huntington, Richmond, 91001676

Rutland County

Smith, Simeon, Mansion, Smith Rd. W of jct. with VT 22A, West Haven, 91001675

To assist in the preservation of the following property, the commenting period has been waived:

VIRGINIA

Richmond (Independent City)

Highland Park Public School 2928 Second Ave. Richmond, 91001683

[FR Doc. 91–25420 Filed 10–21–91; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31953]

SPCSL Corp., Exemption; Amendment of Trackage Rights Agreement, Indiana Harbor Belt Railroad Co.

Indiana Harbor Belt Railroad Company (IHB) and SPCSL Corp. (SPCSL) have agreed to amend their trackage rights agreement of April 16, 1990.[1] The amendment provides for IHB to grant SPCSL overhead trackage rights between IHB's connections with The Belt Railway Company of Chicago and with Conrail, at Elsdon, in Chicago, IL. The transaction was to have been consummated on or after October 9, 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: Gary A. Laakso, SPCSL Corp., One Market Plaza, Room 846, 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: October 15, 1991

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–25445 Filed 10–21–91; 8:45 am]

BILLING CODE 7035–01–M

[1] That agreement was the subject of Finance Docket No. 31674, *SPCSL Corp.—Trackage Rights Exemption—Indiana Harbor Belt Railroad Company* (not printed), served and published (44 FR 21864) May 25, 1990.

DEPARTMENT OF JUSTICE

Rhone-Poulenc Ag. Co., et al.; Lodging of Consent Decree

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on October 4, 1991, a proposed consent decree in *United States* v. *Rhone-Poulenc Ag. Co. and Union Carbide Chemicals and Plastics Co. Inc.*, Civil Action No. 2:90–0929, was lodged with the United States District Court for the Southern District of West Virginia. The proposed consent decree resolves a judicial enforcement action brought by the United States against Rhone-Poulenc, the owner/operator of a chemical manufacturing facility located at Institute, West Virginia, and Union Carbide, the operator of some of the production units at that facility, for violations of Sections 301 and 311 of the Clean Water Act, 33 U.S.C. 1311 and 1321, and for violations by Rhone-Poulenc of the conditions and limitations in its National Pollutant Discharge Elimination System ("NPDES") permit.

In this action filed on November 1, 1990, the United States sought injunctive relief and civil penalties for the discharges from the facility of reportable quantities of hazardous substances into the Kanawha River, for the discharges of pollutants into the Kanawha River that were not authorized by either Rhone-Poulenc's NPDES permit or the Clean Water Act, for Rhone-Poulenc's exceedances of the effluent limitations in its NPDES permit, and for Rhone-Poulenc's failure to comply with the sampling refrigerator requirements outlined in its permit. The proposed consent decree requires that Rhone-Poulenc take injunctive measures, including performance of priority pollutant testing and an environmental audit, and that Rhone-Poulenc and Union Carbide pay a total civil penalty of $425,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Acting Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Rhone-Poulenc Ag. Co. and Union Carbide Chemicals and Plastics Co. Inc.*, DOJ. Ref. 90–5–1–1–3403.

The proposed consent decree may be examined at the office of the United States Attorney, Southern District of West Virginia, 500 Quarrier Street, Charleston, West Virginia 25332, and at the Region III office of the United States Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania 19107. The decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, 202–347–7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $13.25 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Barry M. Hartman,

Acting Assistant Attorney General Environment and Natural Resources Division.

[FR Doc. 91–25337 Filed 10–21–91; 8:45 am]

BILLING CODE 4410–01–M

Thermo-Serv, Inc.; Lodging of Consent Decree

Notice is hereby given that on October 4, 1991, a proposed Consent Decree was lodged with the United States District Court for the Northern District of Texas, Dallas Division in In re: Thermo-Serv, Inc., Civil Action No. CA3–90–2555–D, an action brought pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607(a). The proposed Consent Decree would resolve a proof of claim that the United States filed in Thermo-Serv's bankruptcy proceeding relating to Thermo-Serv's liability for past costs incurred by the United States in connection with the Waste Disposal Engineering, Inc., Superfund site, located near Andover, Minnesota.

The Department of Justice will receive comments on the proposed Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to In re: Thermo-Serve, Inc., D.J. Ref. No. 90–11–3–579. The proposed Consent Decree may be examined at the Office of the United States Attorney (Civil Division) for the Northern District of Texas, Dallas Division, at 1100 Commerce Street, Dallas Texas, 75242 (Room 16G28), and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., Box 1097, Washington, DC 20004 (202–347–2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $3.00 (25 cents per page reproduction costs) payable to Aspen Systems Corporation.

Environment and Natural Resource Division.

Barry M. Hartman,

Acting Assistant Attorney General.

[FR Doc. 91–25338 Filed 10–21–91; 8:45 am]

BILLING CODE 4410–01–M.

Antitrust Division

Maryland Information Technologies Center, Inc.; National Cooperative Research Notification

Notice is hereby given that, on September 12, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Maryland Information Technologies Center, Inc. ("MITC"), filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the joint venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the protections of the Act 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 joint venture, and its general area of planned activity, are given below.

The parties to the joint venture are Bell Atlantic, Inc., Hughes Network Systems, Inc., Morgan State University, Maryland Department of Economic and Employment Development, COMSAT Laboratories, Inc., Interactive Communications, Inc., Compression Telecommunications Corp., the University of Maryland, Kushner Management Planning Corporation, Telecommunications Techniques Corporation, and The Johns Hopkins University.

The nature of the planned activity is to conduct research and experimentation in the information technology area, in order to strengthen Maryland's role in that area and to provide long-term growth in, and diversification of, Maryland's economic base.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–25336 Filed 10–21–91; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: November 25, 1991, 2 pm–4 pm rm. S–5310, Seminar Room 1–B, Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Director, Trade Advisory Group, Phone: (202) 523–2752. Signed at Washington, DC, this 11th day of October 1991.

Shellyn G. McCaffrey,

Deputy Under Secretary, International Affairs.

[FR Doc. 91–25384 Filed 10–21–91; 8:45 am]

BILLING CODE 4510–28–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 4, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 4, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administrator, U.S. Department of Labor, 206 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 7th day of October 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Adonis Apparel, Inc. ILGWU	Albion, IL	10/07/91	09/26/91	26,400	Ladies' Sportswear
Advanced Refractory Technologies (Co)	Buffalo, NY	10/07/91	09/24/91	26,401	Refractory Powders
Air Cruisers Co. (Wkrs)	Belmar, NJ	10/07/91	09/25/91	26,402	Safety Equipment for Commercial Aircraft
Atlas, Inc. UAW	Fostoria, OH	10/07/91	09/17/91	26,403	Internal Component Diesel Engine Parts
Chickasha Manufacturing Co., Inc. (Co)	Chickasha, OK	10/07/91	09/27/91	26,404	Computer Components
Construction Specialties, Inc. (Wkrs)	Cranford, NJ	10/07/91	09/16/91	26,405	Architectural Building Products
Eberhard Manufacturing Co. (IAM)	Strongsville, OH	10/07/91	09/25/91	26,406	Sesamee Padlocks
G–III Leather Fashion (Wkrs)	New York, NY	10/07/91	09/30/91	26,407	Leather Apparel
General Automative Specialty (Co.)	North Brunswick, NJ	10/07/91	09/27/91	26,408	Automotive Switches
Genicom Corp (Wkrs)	Herkimer, NY	10/07/91	09/25/91	26,409	Printers
Halliburton Services (Wkrs)	Carrizo Spring, TX	10/07/91	09/20/91	26,410	Cementing and Oil Well Stimulation
JE Merit Constructors, Inc. (Wkrs)	Addy, WA	10/07/91	09/27/91	26,411	Maintenance Work
Laura Fashions, II (Wkrs)	Dalton, PA	10/07/91	09/26/91	26,412	Womens Dresses
Quinn Audio Products (Co.)	Lake Worth, FL	10/07/91	09/23/91	26,413	Automobile Tweeters
Reliance Gas Marketing (Wkrs)	Tulsa, OK	10/07/91	09/10/91	26,414	Natural Gas
Schlumberger District Office (Wkrs)	Cut-Off, LA	10/07/91	09/25/91	26,415	Oilfield Products
Schlumberger District Office (Wkrs)	Bell Chasse, LA	10/07/91	09/25/91	26,416	Oil and Gas
Schlumberger Manufacturing (Wkrs)	Bell Chasse, LA	10/07/91	09/25/91	26,417	Oilfield Products
Tie Rack (U.S.), Inc. (Wkrs)	Bethlehem, PA	10/07/91	09/24/91	26,418	Men's Ties, Ladies Silk Scarves
TRW Vehicle Safety Systems (Wkrs)	Louisville, MS	10/07/91	09/25/91	26,419	Seat Belts
U.S. Metalsource (Co.)	Buffalo, NY	10/07/91	09/06/91	26,420	Burned and Sheared Plates
Uinta Oil and Gas, Inc. (Wkrs)	Roosevelt, UT	10/07/91	09/23/91	26,421	Crude Oil, Natural Gas
Unisys Corporation (Wkrs)	Roseville, MN	10/07/91	09/23/91	26,422	Integrated Scientific Processor

[FR Doc. 91–25835 Filed 10–21–91; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–25,028]

Eagle Shirtmakers Mahanoy City, PA; Revised Determination on Reopening

On September 23, 1991, the Department, at the request of the Amalgamated Clothing Workers Union reopened its investigation for workers and former workers of Eagle Shirtmakers in Mahanoy City, Pennsylvania. The initial investigation resulted in a negative determination on March 6, 1991 because the "contributed importantly" test of the Group Eligibility Requirements was not met.

New findings show that the Mahanoy plant ceased production in June 1991 and all production workers were laid off.

The parent company, Crystal Brands, had reduced sales of men's shirts in 1990 compared to 1989 and in the first quarter of 1991 compared to the same period in 1990. A survey of Crystal Brands retail customers shows that they increased

their import purchases of men's shirts in 1990 compared to 1989 and in the first quarter of 1991 compared to the same period in 1990.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with men's shirts produced by Eagle Shirtmakers, Mahanoy City, Pennsylvania contributed importantly to the decline in sales or production and to the total or partial separation of workers at Eagle Shirtmakers. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Eagle Shirtmakers, Mahanoy City, Pennsylvania who became totally or partially separated from employment on or after September 21, 1989 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 10th day of October 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-25389 Filed 10-21-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,882-TA-W-25,883]

The Proctor & Gamble Manufacturing Co., Avenel, NJ; and of Staten Island, NY; Negative Determination Regarding Application for Reconsideration

By an application dated October 1, 1991, after being granted a filing extension, the Independent Oil & Chemical Workers, Inc. requested administrative reconsideration of the subject petitions for trade adjustment assistance. The denial notice was signed on July 23, 1991 and published in the **Federal Register** on August 8, 1991 (56 FR 37725).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the Department certified only the workers engaged in employment in the production of Coast soap at the Staten Island plant, since the demand for Coast soap formerly supplied by the Staten Island plant was met by the company's Canadian plant.

The union stated that the Department did not address the other production at the Staten Island plant and that these workers should be certified because of the shutdown of the Coast soap operation.

The Department inadvertently failed to address the other production at Staten Island. The findings show, however, that all other production at Staten Island including household cleaning products, juices and ivory soap was transferred to other corporate domestic locations. The claim that the Avenel plant could not operate independently without the Coast business would not provide a basis for a worker group certification.

Other findings show that during the period relevant to the petition, the Avenel plant workers did not meet the decreased sales or production and the decreased employment criterion of the Group Eligibility Requirements of the Trade Act. The Department would entertain a new petition for these workers when these criteria are met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 7th day of October 1991.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services Unemployment Insurance Service.

[FR Doc. 91-25387 Filed 10-21-91; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of October 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,113; Rina Di Montella Mfg., Conshohocken, PA

TA-W-26,086; Wire Rope Corp of America, Inc., Kansas City, MO

TA-W-26,146; Vernell's Fine Candies, Inc., Bellevue, WA

TA-W-26,106; Grumman Boats (OMCGB, Inc), Marathon, NY

TA-W-26,111; The Merrow Machine Co., Newington, CT

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-26,070; Louisiana Garments Co., Louisiana, MO

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,175; Camden Window & Millwork, Pennsauken, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,161; K-Mart, Duncan, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-26,056; Westinghouse Electric Corp., Semi-Conductor Control Dept., Pittsburgh, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-26,112; Outokumpu American Brass, Kenosha, WI

U.S. imports of copper & related articles declined absolutely and relative to domestic shipment in 1990 compared to 1989.

TA–W–26,169; Sportswear Cafeteria and J.C. Vending, Decaturville, TN

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–26,194; Northeast Chrysler Plymouth, Inc., Bangor, ME

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–26,150; Crystal Brands Men's Sportswear Group, Allentown, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–26,107; Gulfstream Aerospace Technologies, Oklahoma City, OK

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–26,074; Olin Chemicals, Joliet, IL

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–26,002; Pack River Woodworking, Sandpoint, ID

U.S. imports of softwood lumber declined in 1990 compared with 1989.

TA–W–26,160; James River Corp., Minerva, OH

The investigation revealed that criterion (2) has not been met. Sales or promotion did not decline during the relevant period as required for certification.

TA–W–26,124; Duramic Products, Inc., Palisades, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations

TA–W–26,189; Milton Shoe Manufacturing Co., Herndon, PA

A certification was issued covering all workers separated on or after August 27, 1990.

TA–W–26,119; Airpax, Frederick, MD

A certification was issued covering all workers separated on or after July 15, 1990.

TA–W–26,159; Honeywell, Inc., Residential/Building, Controls Div., Golden Valley, MN and Plymouth, MN

A certification was issued covering all workers separated on or after July 1, 1990.

TA–W–26,270; Fisher-Price, Inc., Murray, KY

A certification was issued covering all workers separated on or after August 19, 1990 and before December 31, 1990.

I hereby certify that the aforementioned determinations were issued during the month of October, 1991. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: October 15, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance

[FR Doc. 91–25386 Filed 10–21–91; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–25,851]

Sunshine Mining Co. Kellogg, ID; Negative Determination on Reconsideration

On August 6, 1991, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the Sunshine Mining Company, Kellogg, Idaho. This notice was published in the **Federal Register** on August 16, 1991 (56 FR 40914).

Both the company and the United Steelworkers of America claimed that the Department's customer survey was inadequate and submitted an additional list of customers.

In order for workers to obtain a worker group certification there must not only be increased U.S. imports of like or directly competitive products but the imports must have "contributed importantly" to worker separations and declines in sales or production at the subject firm. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers.

The Department's denial was based on the fact that the contributed importantly test of the Group Eligibility Requirements of the Trade Act was not met. The Department's survey revealed that none of the respondents increased their purchases of imports while decreasing their purchases from Sunshine.

Mining companies with a relative high cost of operation have suffered because of an excess supply causing a lower price for silver. The average price of a troy ounce of silver declined from a recent high of $76 an ounce in 1987 to $5 an ounce in 1990. Official Government data from the U.S. Bureau of the Mines shows that U.S. mine production of silver remained essentially the same in 1990 as in 1989. Although U.S. imports of silver increased slightly in 1990 compared to 1989 so did the disposal of excess silver holdings by the Federal Government. Beginning in fiscal year (FY) 1990, the U.S. Treasury disposed of over 2,500,000 troy ounces of silver in four auctions. An additional amount of silver was disposed of in FY 1991. In other silver transactions the Government continued to dispose of silver held in the National Defense Stockpile. In addition substitutes have been found for silver in table flatware; surgical plates, pins and sutures; electronics; photography; mirrors and other reflecting surfaces and batteries.

On reconsideration, the Department conducted an additional survey for the customers submitted by the company and the union. The findings of this survey showed that the firm's customers did not increase their import purchases of silver while reducing their purchases from Sunshine during the period relevant to the petition. Several customers commented that they would have purchased more silver from Sunshine had Sunshine made it available.

Its also stated that the Department's denial is inconsistent with its earlier certification of the Kellogg workers. The Department certified the Kellogg workers as eligible to apply for adjustment assistance under Petition TA–W–17,522 issued on September 30, 1986 with an impact date of May 20, 1985. Each petition is judged on its own merits and in the time period in which it was filed. U.S. import data, customer survey data, and sales or production and employment data in 1985 and 1986 would not provide a basis for worker separations occurring in 1991.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers and former workers of the Sunshine Mining Company in Kellogg, Idaho.

Signed at Washington, DC, this 9th day of October 1991.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-25388 Filed 10-21-91; 8:45 am]

BILLING CODE 4510-30-M

Office of Work-Based Learning, Federal Committee on Apprenticeship; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-462; 5 U.S. App. 1) of October 6, 1972, notice is hereby given that the Federal Committee on Apprenticeship (FCA) will conduct an open meeting on November 7, 1991, from 8:30 am.-4:30 p.m.; November 8, from 8:30 a.m.-12 noon at the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC, in the DOL Academy, room C-5515, Seminar Rooms 1-A and 1-B.

The agenda for the meeting will include:

Thursday, November 7

8:30 a.m. Call Meeting to Order
- Swearing in New Members
- Overview of Agenda
- Committee Chair's Report and Plans for the FCA Meeting
- Approval of Minutes of July Meeting
- Remarks of The Honorable Lynn Martin, Secretary, U.S. Department of Labor
- Status of Proposed 29-29 Revisions
- Report from OWBL/BAT
- OSHA Safety Standards in Apprenticeship Programs
- Review of BAT Regional/State Directors Survey
- Presentation Sub-Committee Reports
  - Subcommittee on 29/29, Apprenticeship Regulations
  - Subcommittee on Traditional Apprenticeship Programs
  - Subcommittee on Non-Traditional Apprenticeship
  - Subcommittee on Underrepresented Groups
  - Subcommittee on Quality
  - Subcommittee on National Training System
  - Subcommittee on Apprenticeship Operations
  - Subcommittee on Legislation
- OFCCP Discussion of Enforcement and Recruitment Activities
- Senate Bill 1790, High Skilled Competitive Work Force Act
- ERISA Preemption—DOL Position

4:00 p.m. Public Comments

4:30 p.m. Recess to reconvene November 8, 1991, at 8:30 a.m.

Note: Lunch will be taken at 12 noon to 1 p.m.

Friday, November 8

8:30 a.m. Meeting Reconvenes
- Oregon Dual Track Education System
- Immigration Act Regulations and Impact on Apprenticeship
- H.R. 2550—Leading Employers Into Apprenticeship Partnerships Act
- FCA Members' Projects Relating to Apprenticeship
- Other Business and Administrative Activities
- Determine 1992 Meetings Schedule
- Summarization by Chairperson

12 Noon Adjourn

Note: Order of agenda items may be revised due to unforeseen time constraints or availability of outside speakers.

Members of the public are invited to attend the proceedings. Any member of the public who wishes to file written data, views or arguments pertaining to the agenda may do so by furnishing a copy to the Executive Director at any time. Papers received on or before November 1, 1991, will be included in the record of the meeting. Any member of the public who wishes to speak at this meeting should so indicate the nature of intended presentation and the amount of time should be limited to no more than 5 minutes. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests. Communications to the Executive Director should be addressed as follows: Mr. Minor R. Miller, Executive Director, FCA, Office of Work-Based Learning, ETA, U.S. Department of Labor, 200 Constitution Avenue NW, room N-4649, Frances Perkins Building, Washington, DC 20210; telephone number (202) 535-0540.

Signed at Washington, D.C. this 16th day of October, 1991.

Roberts T. Jones,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 91-25390 Filed 10-21-91; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Cellular Biochemistry; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Cellular Biochemistry.

Date & Time: November 6, 7 & 8, 1991, 8:30 a.m. to 5 p.m.

Place: Room 543, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Robert P. Burchard, Program Director, Cellular Biochemistry Program, room 321, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7987.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in cellular biochemistry and metabolism.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: October 16, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-25329 Filed 10-21-91; 8:45 am]

BILLING CODE 7555-01-M

Division of Ocean Sciences; Meeting

The National Science Foundation announces the following meeting:

Name: Ocean Sciences Review Panel.

Date and Time: November 7-8, 1991, 8 a.m.-5 p.m.

Place: St. James Hotel, 950 24th Street, NW., Washington, DC 20037. Embassy Room.

Type of Meeting: Closed.

Contact Person: Dr. Michael R. Reeve, Head, Ocean Sciences Research Section Room 609, National Science Foundation, Washington, DC 20550, Telephone (202) 257-9601.

Purpose of Meeting: To provide advice and recommendations concerning support for research in oceanography.

Agenda: Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

Dated: October 16, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–25330 Filed 10–21–91; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Networking and Communications Research and Infrastructure; Open Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Networking and Communications Research and Infrastructure (NCRI).

Date and Time: November 4–5, 1991, 9 a.m.–5 p.m., November 4, 8:30 a.m.–2 p.m., November 5.

Place: National Science Foundation, 1110 Vermont Avenue, room 5000–A, Washington, DC.

Type of Meeting: Open.

Contact Person: Ms Brenda Williams, Senior Program Assistant, National Science Foundation, 1800 G Street, NW., room 416, Washington, DC. 20550, (202) 357–9717.

Summary Minutes: Ms. Brenda Williams.

Purpose of Meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to the Division of Networking and Communications Research and Infrastructure.

Summarized Agenda: Discussion on issues and opportunities for the Division of Networking and Communications Research and Infrastructure; discussion of the NSFNET Backbone, Gigabit Research, NREN and Committee of Visitors reports of NCR and NSFNET.

Dated: October 15, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–25332 Filed 10–21–91; 8:45 am]

BILLING CODE 7555–01–M

Division of Network and Communications Research and Infrastructure Special Emphasis Panel; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate the project and provide advice and recommendations. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Networking and Communications

Dates: November 5–7 1991.

Time: 8:30 am–5:00 pm each day.

Place: Corporation for National Research Initiatives, 1895 Preston Whie Drive, Suite 100, Reston, VA 22091.

Type of Meeting: Closed

Agenda: Review and evaluate Networking and Communications Project.

Contact: Dr. Darleen Fisher, Networking and Communications Research Program, National Science Foundationn, room 416, Washington, DC 20550 (202) 357–9717.

Dated: October 16, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–25331 Filed 10–21–91; 8:45 am]

BILLING CODE 7555–01–M

Membership of National Science Foundation's Senior Executive Service Performance Review Boards

AGENCY: National Science Foundation.

ACTION: Announcement of Membership of the National Science Foundation's Senior Executive Service Performance Review Boards.

SUMMARY: This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Boards is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESS: Comments should be addressed to Director, Division of Personnel and Management, National Science Foundation, room 208, 1800 G Street, NW., Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Bransford at the above address or (202) 357–7857.

SUPPLEMENTAL INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Boards is as follows:

Permanent Membership

Frederick M. Bernthal, Deputy Director, Chairperson

Jeff Fenstermacher, Assistant Director for Administration, Executive Secretary

Rotating Membership

Charles N. Brownstein, Deputy Assistant Director, Directorate for Computer Information Science and Engineering

Raymond E. Bye, Jr., Director, Office of Legislative and Public Affairs

Mary E. Clutter, Assistant Director for Biological, Behavioral, and Social Sciences

Roger W. Doyon, Head, Africa/Asia Section, Division of International Programs, Directorate for Scientific, Technological, and International Affairs

W. Franklin Harris, Executive Officer, Directorate for Biological, Behavioral, and Social Sciences

Donald F. Heinrichs, Head, Oceanographic Centers and Facilities Section, Division of Ocean Sciences, Directorate for Geosciences

John B. Hunt, Deputy Director, Division of Chemistry, Directorate for Mathematical and Physical Sciences

Lynn Preston, Deputy Director, Division of Engineering Centers, Directorate for Engineering

Kurt G. Sandved, Acting Assistant Director for Scientific, Technological, and International Affairs

Jane T. Stutsman, Deputy Assistant Director, Directorate for Education and Human Resources

Luther S. Williams, Assistant Director for Education and Human Resources

Dated: October 16, 1991.

Margaret L. Windus,

Director, Division of Personnel and Management.

[FR Doc. 91–25333 Filed 10–21–91; 8:45 am]

BILLING CODE 7555–01–M

OFFICE OF PERSONNEL MANAGEMENT

Meetings

The Office of Personnel Management announces the following meetings:

Name: Pay-for-Performance Labor-Management Committee Performance Management and Recognition System Review Committee.

Dates and Times: Pay-for-Performance Labor-Management Committee; November 7, 1991, 1:30 p.m.—2:30 p.m.

Performance Management and Recognition System Review Committee; November 7, 1991, 3 p.m.–4 p.m.

Place: Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–0001. Meetings will be held in room 1350.

Type of Meeting: Open.

Point of Contact: Ms. Doris Hausser, Chief of the Performance Management Division, room 7454, Office of Personnel Management,

1900 E Street NW., Washington, DC 20415–0001.

Purpose of Meetings: To consider ways to strengthen the linkage between performance of General Schedule employees and their pay.

Agenda: Introductory remarks; presentation of recommendations; comments and observations; public input; closing.

Supplementary Information: The committees welcome written data, views, or comments concerning pay-for-performance for General Schedule employees. All such submissions received by close of business (COB) on the dates indicated below will be provided to the committee members and included in the record of the respective meeting:

If received by COB: October 31, 1991.

Input will be considered at the meeting: November 7, 1991.

If time permits, the committee will consider oral presentations relating to agenda items. Persons wishing to address either or both of the committees orally at a meeting should submit a written request to be heard by the deadline listed above. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation, and an estimate of the amount of time needed.

All communications regarding these committees should be addressed to the Point of Contact named above.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91–25396 Filed 10–21–91; 8:45 am]

BILLING CODE 6325–01–M

RESOLUTION TRUST CORPORATION

Notice Concerning Issuance of Powers of Attorney

AGENCY: Resolution Trust Corporation.

ACTION: Public Notice.

SUMMARY: In order to facilitate the discharge of its responsibilities as conservator or receiver of insured depository institutions in the State of Oklahoma, the Resolution Trust Corporation ("RTC") publishes the following notice. The publication of this notice is intended to comply with title 16, section 20 of the Oklahoma Statutes (16 O.S. § 20) which, in part, declares federal agencies that publish notices in the **Federal Register** concerning their promulgation of powers of attorney, to be exempt from the statutory requirement of having to record such powers in every county of Oklahoma in which the agencies wish to effect the conveyance or release of interests in land.

NOTICE: Pursuant to Section 1441a(b)(3) of the Federal Home Loan Bank ("FHLB") Act (12 U.S.C. 1421), as added by Section 212 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), the RTC is empowered to act as conservator or receiver of any state or federally chartered depository institution declared insolvent whose accounts were insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") before the enactment of FIRREA; and for which a conservator or receiver had been appointed at any time during the period beginning on January 1, 1989, and ending on August 9, 1989; or is appointed within the 3-year period beginning on August 9, 1989.

Upon appointment as a conservator or receiver, the RTC by operation of law becomes successor in title to the assets of the depository institutions on behalf of which it is appointed. As of August 9, 1989, the RTC succeeded the FSLIC as conservator or receiver with respect to the depository institutions for which the FSLIC had been appointed receiver as of January 1, 1989. In addition, the RTC has the same powers and rights to carry out its duties with respect to the institutions described in 12 U.S.C. 1441a(b)(3)(A) as the Federal Deposit Insurance Corporation has under sections 11, 12, and 13 of the Federal Deposit Insurance Act (12 U.S.C. 1821, 1822, 1823) with respect to insured depository institutions (as defined in Section 3 of the Federal Deposit Insurance Act) (12 U.S.C. 1813).

In order to facilitate the conservation and liquidation of assets held by the RTC in its aforementioned capacities, the RTC has provided powers of attorney to selected employees of its Tulsa Consolidated office. These employees include: Willie B. Alexander, Nathan L. Combs, Philip DeLong, Rex E. Edgar, Steven P. Greene, Don Hochberger, Jean A. Howard, L. Richard Iorio, Jim Jefferson, Robert L. Lavender, Virginia Lewis, T. Lake Moore, III, Charles E. Murray, Jack Newcomb, John C. Shupert, Jr., Phillip W. Tarkington, Gary B. Turner, Michael R. VanValkenburg, Bruce C. Wiley.

Each employee to whom a power of attorney has been issued is authorized and empowered to: Sign, seal and deliver as the act and deed of the RTC any instrument in writing, and to do every other thing necessary and proper for the collection and recovery of any and all monies and properties of every kind and nature whatsoever for and on behalf of the RTC and to give proper receipts and acquittances therefor in the name and on behalf of the RTC; release, discharge or assign any and all judgments, mortgages on real estate or personal property (including the release and discharge of the same of record in the office of any Prothonotary or Register of Deeds wherever located where payments on account of the same in redemption or otherwise may have been made by the debtor(s)), and to endorse receipt of such payment upon the records in any appropriate public office; receipt, collect and given all proper acquittances for any other sums of money owing to the RTC for any asset which the attorney-in-fact may sell or dispose of; execute any and all transfers and assignments as may be necessary to assign any securities or other choses in action; sign, seal, acknowledge and deliver any and all agreements as shall be deemed necessary or proper by the attorney-in-fact in the care and management of any assets; sign, seal, acknowledge and delivery indemnity agreements and surety bonds in the name of and on behalf of the RTC; sign receipts for the payment of all rents and profits due or to become due on any assets; execute, acknowledge and deliver deeds of real property in the name of the RTC; extend, postpone, release and satisfy or take such other action regarding any mortgage lien held in the name of the RTC; execute, acknowledge and delivery in the name of the RTC a power of attorney wherever necessary or required by law to any attorney employed by the RTC; foreclose any mortgage or other lien on either real or personal property, wherever located; do and perform every act necessary for the use, liquidation or collection of any assets held in the name of the RTC; and sign, seal, acknowledge and deliver any and all documents as may be necessary to settle any action(s) or claim(s) asserted against the RTC, either in its receivership, conservatorship, or in its corporate capacity.

Signed at Washington, DC this 16th day of October 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91–25364 Filed 10–21–91; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29832; File No. SR-AMEX-90-33, Amendment No. 2]

Self-Regulatory Organizations; Filing of Amendment No. 2 to Proposed Rule Change by the American Stock Exchange, Inc., Relating to Modification of the Equity Options Price Maintenance Requirement

October 15, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 25, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") Amendment No. 2 to 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

On December 17, 1990, the Amex submitted to the Commission a proposal to amend Exchange Rule 916 to modify the stock price maintenance requirement for the continued listing of options on certain low-priced equity securities.[1] Currently, Exchange Rule 916 restricts the Amex from listing new series of options when the underlying security is trading below $5. The Amex proposed to amend the rule to allow the Exchange to list additional option series when the underlying security is trading below $5, provided that certain requirements are satisfied. One of the proposed requirements specifies that the market price of the stock must close at or above $3 on a majority of business days during the preceding six months. The Amex now proposes to amend its proposal to provide an additional "step-up" procedure under which the market price of the underlying stock must also increase during the next consecutive six months to close at or above $4 for a majority of the trading days and must be at least $4 per share when additional series are authorized for trading. Accordingly, the Amex proposes to add the following language to Exchange rule 916, Commentary .04(d):

During the next consecutive six calendar month period, to satisfy this section .04, the price of the underlying security as referenced in this paragraph .04(d) shall be $4.

[1] *See* Securities Exchange Act Release No. 29005 (March 25, 1991), 56 FR 13345 (SR-Amex-90-33).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Amex proposes to further amend Exchange Rule 916 to modify the stock price requirement for the continued listing of certain equity options. Exchange Rule 916 establishes certain maintenance standards which must be satisfied by a security underlying an equity option in order for the option to continue to trade. In Amendment No. 1, the Amex developed the following quality of market criteria designed to allow the continued listing of options on low-priced (below $5) stocks and yet continue to minimize opportunities for market manipulation and speculative abuse: (i) The aggregate market value of the underlying company must equal or exceed $50 million; (ii) the customer open interest (two-sided) in the option must equal or exceed 4,000 contracts; (iii) the trading volume in the stock must equal or exceed 2,400,000 shares in the preceding 12 months; and (iv) the market price of the stock must close at or above $3 on a majority of business days during the preceding six months. The Exchange now proposes to further amend its proposal to provide for a "step-up" procedure whereby the market price of the underlying stock, in addition to satisfying the above criteria, must increase over time to continue to qualify for listing.

Specifically, under Amendment No. 2, to continue to be eligible for the listing of additional series, the security must continue to meet the above market value, open interest and trading volume criteria, and, during the next consecutive six-month period, the price of the underlying security must close at or above $4 for a majority of the trading days and must be at least $4 per share when such additional series are authorized for trading. After this second six-month period elapses, the original $5 price maintenance standard would become effective regardless of whether the company meets the criteria established in Amendment No. 1 and Amendment No. 2. This "step-up" procedure will further ensure that the companies which qualify for additional series listing under this proposal are still viable companies which continue to meet (if not exceed) all other applicable maintenance standards.

The Amex believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 12, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-29822; File No. SR-AMEX-91-23]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Reduced Transaction Charges for Certain Index Option Spread Transactions

October 15, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 17, 1991, the American Stock Exchange, Inc. ("Amex" 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 Amex. 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 Amex propose to reduce the transaction charges assessed by the Exchange for certain index option spread transactions effected by a customer that involve the simultaneous purchase and sale of four different series of the same index option class (*i.e.*, a "box" spread). Currently, the transaction charge for customer box spreads in index options is .25¢ per contract (*e.g.*, $1.00 for a spread transaction involving four contracts in different options series) for customer orders of at least 500 contracts per series (*i.e.*, a minimum of 2,000 contracts for the spread transaction). The Amex proposes to reduce this charge to .20¢ per contract for option series priced at $1.00 and above, and to .10¢ per contract for option series priced at less than $1.00. The proposed fee will be applicable to customer box spreads of at least 125 contracts per series (*i.e.*, a minimum of 500 contracts for the spread transaction).

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex 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 the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange proposes to reduce further transaction charges imposed on certain kinds of customer options orders pursuant to Article VII, Section 5 of the Exchange Constitution. The proposed reduction will apply to charges for index option spread transactions involving the simultaneous purchase and sale of four different series of the same index option class. In June 1990, the Exchange reduced the transaction charge for this type of spread transaction from .40¢ per contract to .25¢ per contract for customer orders of at least 500 contracts per series (*i.e.*, a minimum of 2,000 contracts for the spread transaction).[1]

The Exchange now proposes to reduce the transaction charge for customer orders in four-sided index option spread transactions from .25¢ per contract to .20¢ per contract for option series priced at $1.00 and above, and to .10¢ per contract for option series priced at less than $1.00. In addition, the Amex proposes to lower the minimum number of contracts per customer order needed to receive this reduced transaction charge to 125 contracts per series (*i.e.*, a minimum of 500 contracts for the spread transaction).

The Amex's proposal is based upon a Chicago Board Options Exchange ("CBOE") pilot program approved by the Commission in June 1991.[2] The CBOE's pilot program provided a 50% rebate on transaction and trade match fees for customers whose box trades in Standard & Poor's 500 Index options totalled 500 or more contracts for the four sides of the trade. Under the CBOE's pilot program, customers entitled to the rebate paid a transaction fee of .20¢ per contract for options with premiums priced at $1.00 and above, and .10¢ per contract for options with premiums below $1.00. Trade match fees were also entitled to a 50% rebate, amounting to .02¢ per contract.

The Amex proposes to make the reduced fee schedule for box spreads effective for executions occurring on or after September 3, 1991.

(2) Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(4), in particular, in that the above-described reduction of index option transaction charges for customer spread transactions involving four different series is intended to assure the equitable allocation of reasonable dues, fees, and other charges among members, issuers and other persons using the Exchange's facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no 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 solicited or received with respect to the proposed rule change.

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[1] *See* Securities Exchange Act Release No. 28193 (July 11, 1990), 55 FR 29128 (order approving File No. SR-Amex-90-12).

[2] *See* Securities Exchange Act Release No. 29482 (July 24, 1991), 56 FR 36180 (order approving SR-CBOE-91-27).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by November 12, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34–29821; File No. SR–AMEX–91–24]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc.; Relating to the Listing of Capped Index Options

October 15, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 27, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the 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 Amex proposes to amend its rules to allow the Exchange to list capped index options. Capped index options are options on a specific market index that are exercised automatically when the option's "cap price" (the strike price plus the cap interval for a call or the strike price minus the cap interval for a put) is less than or equals the closing index value for calls or when the cap price is greater than or equals the closing index value for puts. The proposed call options are the equivalent of vertical bull spreads traded as a single security (*i.e.*, the combination of one long and one short call position with the same expiration but where the strike price of the short call is higher than the strike price of the long call). Conversely, the proposed put options are the equivalent of vertical bear spreads traded as a single security (*i.e.*, the combination of one long put and one short put position with the same expiration, but where the strike price of the short put is lower than the strike price of the long put). The text of the proposal is attached as exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Amex proposes to amend its rules to allow the Exchange to list capped put and call options on its stock indexes. Similar to a standard European-style index option, the proposed capped index option is exercisable only at expiration, except that the capped option will be exercised automatically if the underlying index touches an established predefined maximum value above (for calls) or below (for puts) the strike price (based upon the closing value of the underlying index) at any time during the life of the option. Capped call options are the equivalent of vertical bull spreads traded as a single security and capped put options are the equivalent of vertical bear spreads traded as a single security. Unlike spreads, however, the holder of a capped index option can capture the entire profit when the capped price is reached without having to wait for the time erosion of the short position. Thus, capped index options will provide investors with a more efficient method of executing spread transactions. Additionally, transaction costs will be greatly reduced since capped index options are effected as a single transaction, unlike spreads, which are two-sided.

Initially, the Exchange plans to list one capped index option with a $20.00 cap interval above (for calls) and a $20.00 interval below (for puts) the current index level. The Amex proposes to list series with four months until expiration and to list new series every two months. For long-term options, the Exchange plans to list series with up to one year until expiration. Under the proposal, the Exchange will be able to modify the cap interval for indexes with varying index levels and to add new strikes or additional series to accommodate large moves in the underlying index.

Due to the automatic exercise feature of capped index options, the Exchange proposes that they not be aggregated with existing exercise limits for the underlying stock index. For example, during the nearest term expiration month of September, members can exercise up to 15,000 Institutional Index ("XII") option contracts. If the Exchange lists an XII capped option with an expiration beyond September, and the capped XII option is exercised automatically during the month of September, members could still exercise up to 15,000 standard XII options in addition to those capped options which were automatically exercised. Capped option position limits, however, will be aggregated with standard option contracts on the same underlying stock index.

Lastly the Exchange believes that the introduction of capped index options will not result in a proliferation of strike

prices (absent an enormously large move in the market) since the Exchange plans to list only two new series every two months for a total of 12 new series per year. The Exchange notes that this is one-half the number of series which are added upon the initial listing of a single equity option, (*e.g.*, puts and calls with three strikes for each of four expiration months).

The Amex believes that the proposed rule change is consistent with the Act, in general, and with section 6(b)(5), in particular, because it is designed to promote just and equitable principles of trade and to protect the investing public. In addition, the Exchange believes that the proposal is consistent with the Act because it will add liquidity to the market by providing a more efficient method of executing spread transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 12, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

Italicizing indicates material to be added; brackets indicate material to be deleted.

Section II. Stock Index Options

Applicability and Definitions

Rule 900C. (a) through (b)(19) No change.

(20) Automated European Style Option—

The term "automatic European style option" means an option contract that is automatically exercised when the "cap price" is reached or exceeded based upon the closing index value. If the "cap price" is not reached, the option can be exercised only at its expiration pursuant to the rules of the Options Clearing Corporation.

(21) Capped Index Option—

The term "capped index option" means an "automatic European style" option contract on a stock index group which is automatically exercised anytime prior to its expiration when the cap price is less than or equal to the closing index value for calls or when the "cap price" is greater than or equal to the closing index value for puts.

(22) Cap Price—

The term "cap price" means the strike price plus the cap interval for a call or the strike price minus the cap interval for a put. The cap price is assigned to the capped index option when listed.

Rule 903C Series of Stock Index Options

(a) through (c) No change commentary.

.01 No change.

.02 The procedures for adding strike prices and expiration months for capped index options shall be as follows:

a. The cap interval shall initially be $20.00 but may be modified pursuant to such a determination by the Exchange.

b. Initially, one near-the-money call and put will be listed having four months until expiration and additional at-the-money series will be listed every two months having four months until expiration. For long-term options, series may be listed having up to one year until expiration.

c. Series may be added to existing expiration months if there has been a significant move in the underlying index value.

Rule 904C Position Limits

(a) through (c) No change.

(d) In determining compliance with position limits applicable to stock index options, option contracts on a stock index group shall not be aggregated with option contracts on an underlying stock or stocks included in such group, and option contracts on one stock index group shall not be aggregated with option contracts on any other stock index group. However, in determining compliance with paragraph (b) above, option contracts on the LT–20 Index must be aggregated with option contracts on the Major Market Index. For aggregation purposes, ten LT–20 Index contracts equals one Major Market Index contract. *Capped options on a stock index group shall be aggregated with standard option contracts on the same stock index group.*

Rule 905C Exercise Limits

(a) No change.

(b) In determining compliance with exercise limits applicable to stock index options, option contracts on a stock index group shall not be aggregated with option contracts on an underlying stock or stocks included in such group, [and] option contracts on one stock index group shall not be aggregated with option contracts on any other stock index group *and capped index options shall not be aggregated with standard option contracts on the same stock index group.*

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[Release No. 34-29824; File No. SR-MSRB-90-4—Admt. 1]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Continuing Disclosure Information Pilot System

October 15, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 7, 1991, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a 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 Municipal Securities Rulemaking Board ("Board" or "MSRB") is filing an amendment to its proposed rule change SR-MSRB-90-4 regarding a proposed Board facility to accept and disseminate continuing disclosure information about municipal securities issues. The amendment to the text of the proposed rule change is in the nature of a substitute.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the purposed 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 and is set forth in sections (A), (B), and (C) below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

(a) The proposed rule change is a facility plan for the Board to operate a system to accept voluntarily submitted continuing disclosure information ("CDI") about municipal securities issues and to disseminate that information.

Background

The system described in the proposed rule change would become part of the Board's MUNICIPAL SECURITIES INFORMATION LIBRARY (or "MSIL") system. The Board initially filed the proposed rule change on June 22, 1990 (File No. SR-MSRB-90-4), along with two other proposed rule changes relating to the MSIL system. One of the other proposed rule changes (File No. SR-MSRB-90-3) was an amendment to Board rule G-36 requiring underwriters to provide certain advance refunding documents to the Board. The other proposed rule change (File No. SR-MSRB-90-2) was a plan for a facility to accept and disseminate copies of official statements and advance refunding documents sent to the Board under rule G-36 (the "OS/ARD" System) and included the overall plan for the MSIL system.

The Commission published the three proposed rule changes for comment on July 12, 1990.[1] On June 6, 1991, the Commission held an Open Meeting at which it approved the proposed rule changes relating to rule G-36[2] and the OS/ARD system.[3] At that meeting, the Commission also discussed, but tabled further consideration of, the proposed rule change relating to the system for accepting and disseminating CDI.

As initially filed with the Commission, the proposed CDI system would have accepted CDI voluntarily submitted by trustees, issuers or persons designated by issuers and would have begun operations by accepting CDI in the form of short, textual disclosure notices. The proposed system would have accepted this CDI only if submitted electronically via computer modem. The system accordingly was called the "Continuing Disclosure Information/Electronic Submission" or "CDI/ES" system. Upon receipt of a disclosure document in electronic form, the CDI/ES system would have retransmitted the document electronically, via computer modem, to all CDI/ES system subscribers simultaneously.

At the June 6 Open Meeting, the Commission stated its concern that the proposed CDI/ES system would not allow issuers and trustees of municipal securities to submit their CDI in paper form or by facsimile transmissions. The Commission suggested that voluntary submission of CDI would be encouraged if the proposed system accepted paper and/or facsimile transmissions of documents. In response to these comments, the Board has revised the proposed rule change to allow the proposed system to accept and disseminate CDI submitted by mail and by facsimile transmission as well as the electronic submissions originally contemplated by the CDI/ES system.

The Board stated the purpose of, and statutory basis for, the proposed rule change in its initial filing with the Commission.[4] Although the Board has amended the proposed rule change to add the capability for the system to accept submission of paper documents and facsimile transmission of documents, the Board believes that its previous statement of the purpose of, and statutory basis for, the proposed rule change supports the proposed rule change as amended. A description of the substantive revisions in the proposed system and the purpose of these revisions follows.

Program Would be Operated on a Pilot Basis

The revised system, called the CDI Pilot System (or "Pilot System") would be operated on a pilot basis for a period of 18 months. At the end of the pilot period, the Board would evaluate system operations and decide whether to continue, substantially modify or discontinue the system. In addition, the Pilot System would be implemented in phases. At the end of each phase, the Board would evaluate and address any technical, policy and cost issues which arose during that phase, prior to committing the system to a greater capacity.

During the first six months of pilot operations, the Pilot System would accept CDI only from trustees. After this phase, CDI would be accepted from issuers as well as trustees. Limiting the system initially to trustees would allow the Board to gain experience with a relatively limited universe of potential submitters (approximately 1,800 trustees), prior to expanding the system to a much larger and more diverse universe of potential submitters (approximately 80,000 issuers).

The Board also anticipates that, during the pilot period, the CDI Pilot System would be limited to short disclosure documents (*e.g.*, one to three pages in length or the equivalent in electronic form, if provided electronically by modem). This is consistent with the original CDI/ES system plan, which was to begin operations with these types of

[1] Securities Exchange Act Release No. 28197 (July 12, 1990) published in 55 FR 29436 (OS/ARD system); Securities Exchange Act Release No. 28198 (July 12, 1990) published in 55 FR 29687 (rule G-36 amendment); Securities Exchange Act Release No. 28199 (July 12, 1990) published in 55 FR 29691 (system for CDI dissemination).

[2] Securities Exchange Act Release No. 29299 (June 13, 1991) published in 56 **Federal Register** 28204.

[3] Securities Exchange Act Release No. 29298 (June 13, 1991) published in 56 FR 28194.

[4] File No. SR-MSRB-90-4, at 8-21.

documents. The Board notes that many of the time-critical disclosure documents that can have an immediate effect on market prices fall within this category (*e.g.*, "technical default" or "pre-default notices" by trustees). The Board believes that the CDI Pilot System, by facilitating the dissemination of such notices, would address one of the most important problems with respect to CDI in the municipal securities market and would be capable of operating immediately in a successful and cost-effective manner. After gaining experience with short disclosure notices, the Board would evaluate how to expand the system to accommodate longer CDI.[5]

Acceptance of Paper and Facsimile Transmissions

With respect to the addition of paper and facsimile submission capabilities, the Board agrees with the point made at the Commission's June 6 Open Meeting, that, by allowing paper documents and facsimile transmissions to be sent to the system, voluntary submissions of documents by issuers and trustees can be encouraged and facilitated. The Board had considered adding the capability for the MSIL system to accept paper copies of CDI even prior to the Commission's June 6 meeting and was aware that certain commentators on the proposed CDI/ES system had recommended this capability for the CDI/ES system. The Board's initial filing, which limited the proposed system to electronic submissions, was based on the Board's intention to construct a system that: (i) could be implemented quickly to address certain types of CDI that are time-critical and important to the market; (ii) ensured that CDI submitted to the system would be disseminated quickly and would be made available simultaneously to all system subscribers; and (iii) would be capable of operating relatively inexpensively and being supported primarily by user fees.

As discussed further below, the Board believes that the CDI Pilot System generally can meet these objectives, albeit at a potentially greater cost. The Board agrees with the conclusion of the Commission, expressed in its order approving the OS/ARD system, that "there exists a lack of adequate information regarding municipal issuers and the terms of municipal securities in the market, and that increased availability of offering statements and other disclosure items already voluntarily prepared by municipal issuers would increase efficiency and fairness in the marketplace and provide needed protection to investors from sales practice fraud and manipulation" (emphasis added). The Board believes that, by revising its proposed system for CDI to accept paper and facsimile transmissions, it would encourage and facilitate submission of voluntarily preposed disclosure documents for dissemination to the market. Thus, the Board believes that the amendment to the proposed rule change enhances the ability of the prepared system to serve the need outlined by the Commission.

Procedures for Accepting and Disseminating Paper and Facsimile Documents

For documents submitted by mail or by facsimile transmission, the CDI Pilot System would utilize procedures, similar to those contemplated by the original CDI/ES system, which: (i) collect information from the document submitter identifying who is submitting the document, the issuer of the securities to which the document relates and the document being submitted; and (ii) attempt to verify the origin of the document to help ensure the authenticity of the document prior to dissemination by the system. To accomplish this latter function, the CDI Pilot System would require each issuer or trustee wishing to submit CDI for dissemination to first contact the Board and provide information such as the submitter's telephone number and the name(s) of the person(s) that will be responsible for information provided by the submitter.

The CDI Pilot System would provide two methods of dissemination. The primary means of dissemination would be a subscription service transmitting each document accepted by the Pilot System as soon as possible after the document is accepted ("subscription service"). As contemplated in the original CDI/ES system, CDI sent to the CDI Pilot System by modem would be sent to subscribers by modem. CDI sent to the CDI Pilot System in paper form or by facsimile transmission would be sent to subscribers by facsimile transmission. The Board believes that using facsimile and modem transmission for dissemination provides the quickest dissemination possible for CDI received in paper and facsimile form, while providing all subscribers with access to the CDI on an equal and simultaneous basis. As a secondary means of dissemination, documents provided to subscribers also would be available for review and copying at the Board's Public Access Facility ("PAF"), located at the Board's offices. As was the case for the proposed CDI/ES system, the Board would encourage redistribution of CDI obtained from the CDI Pilot System and would place no restrictions on redistribution.

The Board would operate the CDI Pilot System with the goal of disseminating CDI as quickly as possible after the documents are received by the system. However, because of the manual processing necessary for paper and fascimile documents, the time period between receipt of a paper or fascimile document and its dissemination would be somewhat longer than the several minutes planned for dissemination of electronic submissions in the CDI/ES system.

The actual time for dissemination of an incoming paper or facsimile document would depend upon a number of factors, such as the volume of incoming CDI, which cannot be predicted at this time. The Board is planning the CDI Pilot System so that it can accommodate up to 100 incoming documents per day during the pilot period. The Board also plans for the system to meet the following minimum goals in the event of such a high volume of input. CDI submitted by computer modem would continue to be disseminated within minutes of the final authorization given by the submitter. This is possible because these documents can be processed for acceptance and dissemination with automated techniques. CDI submitted by facsimile transmission and mail would be transmitted to subscribers no later than the day that it is received by the Board. The Board anticipates that normal time between receipt and dissemination of a document would be much faster than this. As between mail and facsimile transmissions, the Board believes that a submitter likely would use facsimile transmission if he believed that the CDI contained time-critical information of immediate importance to the market. Therefore, the Board would give priority in system processing queues to incoming facsimile transmissions over mailed documents.

[5] Many different types and styles of longer documents are considered "disclosure documents" or CDI by issuers, trustees and other market participants. These documents, which are produced in devierse formats, sizes and styles, often contain a preponderance of information that is of little or marginal interest to securities investors and present considerable challenges to any document collection and dissemination system which seeks to provide CDI to the market in a useful and cost-effective manner. As noted by the Commission in its order approving the OS/ARD system, Section 15B(d)(2) of the Exchange Act prevents the Board from setting form and content standards for issuer documents. Securities Exchange Act Release No. 29298 (June 13, 1991), at 46.

Hours of Operation

As was planned for the proposed CDI/ES system, the CDI Pilot System would operate on business days on which the Board is open (most business days except for federal holidays). The Pilot System would receive documents submitted by trustees and issuers by mail, facsimile transmission and computer modem from 9:00 a.m. to 4:00 p.m. Eastern Time. These hours for receipt of documents have been shifted one-half hour earlier than in the plan for the proposed CDI/ES system to accommodate the manual, end-of-day processing that would be necessitated by incoming paper and facsimile transmissions.

Subscribers would begin receiving transmissions from the system at 9 a.m. Eastern Time and transmissions would continue throughout the business day until all documents accepted by the system on that day are transmitted. During PAF business hours (9:00 a.m. to 4:30 p.m. Eastern Time), PAF users would have access to all documents that have been disseminated to subscribers.

System Costs and Fees

The manual processing and dissemination that would be necessary for incoming paper and facsimile paper and facsimile transmissions of CDI increase the potential cost of the proposed system from the $100,000 yearly operational cost estimated for the proposed CDI/ES system. The operational cost of the CDI Pilot System would be dependent on a number of factors that cannot be predicted in advance, including: (i) The number of submitters that will seek access to the system; (ii) the volume of incoming documents; (iii) the percentages of incoming documents that are mailed, transmitted by facsimile, and transmitted by modem; (iv) the intra-day pattern of submissions; (v) the number of subscribers; and (vi) the number of PAF users seeking CDI and the volume of their document requests. Based on an assumption of 50 incoming documents per day by mail or facsimile transmission, 20 subscribers, and relatively limited PAF use, the Board anticipates that yearly operational costs would fall within a range of $300,000 to $500,000. Cost estimates could move outside this range depending on volume of incoming paper or facsimile documents and the number of subscribers and PAF users.

Although Board funds would be expended to initiate the project and most likely would be necessary to support the Pilot System, the Board intends that, over time, the operational costs of any Board-operated CDI system would be borne primarily by fees paid by system subscribers and PAF users. Submitters would not be charged a fee to establish submitter files or to submit documents to the system.

Since operational costs and the number of subscribers and PAF users cannot be predicted at this time, fee estimates for teh CDI Pilot System necessarily are preliminary and subject to change. At a maximum, total subscriber and PAF fees received by the Board would not exceed the operational cost of the system. At a minimum, fees would cover costs of dissemination of the documents. Subscribers would pay a one time "set-up" fee to cover the cost of equipment and telephone installation necessary to service that subscriber (estimated at $2,000). In addition, a subscriber would pay a flat fee to receive all documents accepted by the system and would pay for the telephone charges actually incurred by the Board to transmit documents to that subscriber. At this time, the Board estimates that first year costs for the subscription service (excluding the set-up fee) would be approximately $10,000 to $15,000, plus the cost of telephone service to that subscriber. PAF users would be able to review documents free of charge. Paper copies of documents could be obtained at the PAF at a cost of approximately $.20 per page.

(b) The Board has adopted the proposed rule change and this amendment pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended ("the Act") which authorizes the Board to adopt rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in municipal securities and, in general, to protect investors and the public interest. In its initial filing of the proposed rule change, the Board discussed how the proposed rule change is consistent with this section of the Act. The Board does not believe that this analysis, in general, is affected by the revision of the proposed system to accept paper and facsimile transmissions of CDI.

As the Commission concluded in its approval order for the OS/ARD system, the grant of authority to the Board by the Act is broad enough to include the building and the operation of information dissemination systems which are designed to accomplish the goals of the Act.[6] As discussed above, the Board believes that the amendment to the proposed rule change would further the statutory purpose of the proposed system by encouraging submission of voluntarily prepared CDI to the system, facilitating greater dissemination of disclosure information regarding municipal securities in the secondary market and thus improving the efficiency and fairness of the market and promoting just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

In its initial filing, the Board discussed why it believed that the proposed CDI/ES system did not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Board also has addressed comments received by the Commission on this issue with respect to the MSIL system.[7] The Board does not believe that this analysis generally is affected by the revision of the proposed system to allow acceptance and dissemination of CDI submitted in paper form and by facsimile transmission.

The Board continues to believe that the proposed system, as revised, would promote competition among information vendors by: (i) Making available to information vendors and potential information vendors a relatively inexpensive and reliable source for obtaining complete copies of all CDI submitted to the Board; (ii) encouraging the redistribution by system users of these documents and encouraging the development of information products based on the documents (*e.g.*, analysis, document summaries, document extracts); and (iii) providing equal access to all system documents and thus not conferring any special or unfair economic benefit to any specific information vendor or other party. The Board also notes that submission of CDI to the Board by issuers and trustees would be voluntary, that the proposed rule change does not mandate use of the system by any party and that the proposed rule change in no way requires or implies that the CDI Pilot System will become the exclusive source for CDI provided to the market.

[6] Securities Exchange Act Release No. 29298 (June 13, 1991), at 34-44.

[7] Letter of October 12, 1990, from Diane G. Klinke, General Counsel, MSRB, to Kathryn Natale, Assistant Director, Division of Market Regulation, SEC.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others.

The Board in its initial filing discussed the comments received on the proposed CDI/ES system. The Board has not solicited comments or received comments on the revisions to the system as set forth in this amendment. As discussed above, the Board amended the proposed rule change in response to the discussion of the proposed rule change by the Commission at its June 6, 1991, Open Meeting.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any 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. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 12, 1991.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 C.F.R. 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-25352 Filed 10-21-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

October 16, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

RJR Nabisco Holdings Group, Inc.
Depositary Shares (representing Preferred Equity Redeemable Cumulative Stock) (File No. 7-7410)
Blackstone 1998 Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7-7411)
Blackstone Municipal Target Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7-7412)
Ground Round Restaurant
Common Stock, $.16 2/3 Par Value (File No. 7-7413)
Harken Energy Corp.
Common Stock, $.01 Par Value (File No. 7-7414)
He-Ro Group Ltd.
Common Stock, $.01 Par Value (File No. 7-7415)
International Corona Corp.
Class A Common Stock, No Par Value (File No. 7-7416)
K Mart Corp.
$3.41 Depositary Shares (representing 1/4 of a share of Preferred Equity Redeemable Cumulative Stock) (File No. 7-7417)
Maxum Health Corp.
Common Stock, $.01 Par Value (File No. 7-7418)
Nuveen Insured Municipal Opportunity Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-7419
Plains Resources, Inc.
Common Stock, $.10 Par Value (File No. 7-7420)
TIE/Communications, Inc.
Common Stock, $.10 Par Value (File No. 7-7421)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 6, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-25353 10-21-91; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 10/10-0171]

Capital Resource Corporation; License Surrender

Notice is hereby given that Capital Resource Corporation, 1001 Logan Building, Seattle, Washington, has surrendered its license to operate as a small business investment company under section 301(c) of the Small Business Investment Act of 1958, as amended (the Act). Capital Resources Corporation was licensed by the Small Business Administration on May 19, 1980.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on October 11, 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)

Wayne S. Foren,

Associate Administrator for Investment.

Dated: October 15, 1991.

[FR Doc. 91-25409 Filed 10-21-91; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of San Diego, will hold a pubic meeting at 2 p.m. on Thursday, October 31, 1991, in the Federal Building, 880 Front Street, room 2–S–14, San Diego, CA, 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 Mr. George P. Chandler, Jr., District Director, U.S. Small Business Administration, 880 Front Street, suite 4–S–29, San Diego, CA 92188, (619) 557–7252.

Caroline J. Beeson,

Assistant Administrator, Advisory Councils.

[FR Doc. 91–25407 Filed 10–21–91; 8:45 am]

BILLING CODE 8025–01–M

Region I Advisory Council Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Augusta will hold a public meeting at 9:30 a.m. on Tuesday, October 29, 1991, at the Key Bank Board Room, Water Street, Augusta, Maine, 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 Roy Perry, District Director, U.S. Small Business Administration, 40 Western Avenue, Augusta, Maine 04330, (207) 622–8382.

Caroline J. Beeson,

Assistant Administrator for Advisory Councils.

[FR Doc. 91–25408 Filed 10–21–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Antiterrorism Assistance Training

[Public Notice 1504]

AGENCY: Department of State.

SUBAGENCY: Bureau of Diplomatic Security.

SUBJECT: Antiterrorism Assistance Training.

In accordance with Office of Management and Budget Circular No. A–102, dated March 11, 1988, the Department of State hereby gives advance public notice of intention to establish a Cooperative Agreement for furthering the objectives of the Antiterrorism Assistance Program (22 U.S.C. 2349 aa, et seq.). Under this authority, the Department of State provides assistance to foreign security and law enforcement personnel to enhance their abilities to deter terrorists and terrorist groups.

The Department is now developing specifications and a Statement of Work to solicit responses from state and local agencies that may have both the required facilities and the interest to participate in this program. The requirements include:

- A training site with extensive facilities for conducting classroom and year-round outdoor training for foreign security personnel. The students to be trained will be from a wide spectrum of ranks and job assignments and from varying cultures and nationalities.
- Classrooms to accommodate up to 30 students, living quarters, dining facilities for up to 100 persons, recreational facilities, and outdoor ranges for rifle, pistol, shotgun and submachine gun instruction and firing practice. Tactical training areas for defensive driving, rappelling facilities, a shooting house and areas for the safe detonation of explosive charges.
- The capacity to handle as many as three classes of approximately 30 persons each simultaneously. Changes in program schedules as well as additions and cancellations to the rosters, can be expected. A level student load, scheduled at regular intervals, cannot be guaranteed.
- All students will be foreign police or security personnel, and few will speak English. The Department of State will provide interpreters and bilingual escorts.
- Personnel to provide the wide-range of administrative functions required to support this training activity, both in the classroom and within the facility and its environs. Also, there is a need for qualified drivers to operate United States Government provided vehicles.

Requirements for instructors, course development and the "delivery of training" is not a part of these requirements. Development of comprehensive course materials and training plans, and instructors to conduct established training will be arranged through a variety of contractual and other arrangements separate from this agreement. These instructors will be utilizing the training facilities to be provided under this agreement.

It is estimated that this agreement will be awarded as early as February 15, 1992. The agreement will be awarded for one year effective on the date of the Grants Officer's signature. It will be renewed, at the option of the Government, on a noncompetitive basis for four (4) additional one-year periods.

State or local agencies/academies desiring to respond to this notice may request copies of the requirements package from Rudy G. Hall, U.S. Department of State, DS/ASD, P.O. Box 3590, Washington, D.C. 20007–0090. Telephone (202) 663–0049.

Dated: October 10, 1991.

Rudy G. Hall,

Grants Officer, Bureau of Diplomatic Security

[FR Doc. 91–25335 Filed 10–21–91; 8:45 am]

BILLING CODE 4710–43–M

[Public Notice 1502]

Soviet and Eastern European Studies Advisory Committee; Meeting

The Department of State announces that the Soviet and Eastern European Studies (Title VIII) Advisory Committee will convene on November 8, 1991, beginning at 9:30 a.m. in room 1105, U.S. Department of State.

The Advisory Committee will recommend grant recipients for the FY 1992 competition of the Soviet and Eastern European Research and Training Act of 1983. The agenda will include: opening statements by the Chairman and members of the Committee; oral statements by interested members of the public about the Title VIII program in general; and within the Committee, discussion, approval, and recommendation that the Department of State negotiate grant agreements with certain "national organizations with an interest and expertise in conducting research and training concerning the USSR and Eastern Europe," based on the guidelines contained in the call for applications published in the **Federal Register** on May 16, 1991.

This meeting will be open to the general public; however, attendance will be limited to the seating available. Entry into the Department of State building is controlled and must be arranged in advance of the meeting. Those planning to attend should notify Joanne Bramble, INR/RES, U.S. Department of State, (202) 632–2066, by November 4, providing their date of birth and Social Security number. All attendees must use the 23rd Street entrance to the building. Visitors who arrive without prior notification and without a photo ID will not be admitted.

Dated: October 4, 1991.

Kenneth E. Roberts,

Executive Director, Soviet and Eastern European Studies Advisory Committee.

[FR Doc. 91-25393 Filed 10-21-91; 8:45 am]

BILLING CODE 4710-32-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements filed during the Week Ended October 11, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47781
Date filed: October 7, 1991
Parties: Members of the International Air Transport Association
Subject: Mail Vote 509 (PTA Services in Malawi)
Proposed Effective Date: October 1, 1991

Docket Number: 47782
Date filed: October 7, 1991
Parties: Members of the International Air Transport Association
Subject: Resolution 033f—Lebanon
Proposed Effective Date: Upon Government Approvals

Docket Number: 47785
Date filed: October 9, 1991
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1363 dated September 27, 1991 Canada-Europe Expedited Reso 092cc (R-1)
Proposed Effective Date: November 1, 1991

Docket Number: 47786
Date filed: October 9, 1991
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P 1116 dated October 1, 1991,
Europe-Africa Expedited Resos, R-1 To R-25, intended effective date: November 1, 1991;
TC2 Reso/P 1117 dated October 1, 1991, Europe-Africa Expedited Resos, R-26 To R-28, intended effective date: December 1, 1991;
TC2 Reso/P 1118 dated October 1, 1991, Europe-Africa Expedited Resos, R-29 To R-33, intended effective date: January 1, 1992;
TC2 Reso/P 1126 dated September 30, 1991, Within Africa Expedited Resos, R-34 To R-42, intended effective date: November 1/ November 15, 1991.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-25354 Filed 10-21-91; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA), Special Committee 167 and EUROCAE Working Group 12 Digital Avionics Software; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the fourth joint meeting of Special Committee 167 and EUROCAE Working Group 12 to be held November 6-8, 1991, at the Software Productivity Consortium (SPC), 2214 Rock Hill Road, Herndon, Virginia, 22070, commencing at 8:30 a.m.

The agenda for this meeting is as follows: (1) Introductory remarks; (2) Approval of the previous meeting minutes; (3) Report on Toulouse meeting (joint EUROCAE/RTCA meeting no. 3); (4) Special reports; (5) Report on fourth draft of DO-178B; (6) Jointly-approved position paper presentations; (7) Individual working group sessions; (8) Working group reports; (9) Review of new issues and task assignments not covered in working group reports; (10) Review of overall schedule and documents progress; (11) Other business; (12) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 11, 1991.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 91-25373 Filed 10-21-91; 8:45 am]

BILLING CODE 4910-13-M

Middle Georgia Regional Airport, Macon, GA; Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Macon for Middle Georgia Regional Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Middle Georgia Regional Airport under part 150 in conjunction with the noise exposure maps and that this program will be approved or disapproved on or before April 7, 1992.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is October 10, 1991. The public comment period ends December 9, 1991.

FOR FURTHER INFORMATION CONTACT: Mrs. Catherine Nelmes, Program Manager; Atlanta Airports District Office; 1680 Phoenix Parkway, Suite 101; College Park, Georgia 30349 (Telephone: 404/994-5306). Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Middle Georgia Regional Airport are in compliance with applicable requirements of part 150, effective October 10, 1991. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before April 7, 1992. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible

uses and for the prevention of the introduction of additional noncompatible uses.

The City of Macon submitted to the FAA on September 23, 1991, noise exposure maps, descriptions and other documentation which were produced during the FAR part 150 Noise Study. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a) (1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the City of Macon. The specific maps under consideration are Exhibits 5–A and 5–B in Volume I of the submission. The FAA has determined that these maps for Middle Georgia Regional Airport are in compliance with applicable requirements. This determination is effective on October 10, 1991. FAA's determination on an airport operator's noise exposure maps in limited to a finding that the maps were developed in accordancew with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Middle Georgia Regional Airport, also effective on October 10, 1991. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal to noise compatibility programs, but that further review will be necessary prior to approval or disapproval to the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before April 7, 1991.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591.

Federal Aviation Administration, Atlanta Airports District Office, 1680 Phoenix Parkway, Suite 101, College Park, Georgia 30349.

Mr. Rex Elder, Aviation Director, Middle Georgia Regional Airport, 1000 Terminal Drive, Macon, Georgia 31297.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Southern Region, Atlanta, Georgia, October 10, 1991.

Scott L. Seritt,

Assistant Manager, Planning and Program Development, Atlanta Airports District Office.

[FR Doc. 91–25379 Filed 10–21–91; 8:45 am]

BILLING CODE 4910–13–M

Will Rogers World Airport, Oklahoma City, OK; Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the city of Oklahoma City under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On March 27, 1991, the FAA determined that the noise exposure maps submitted by the city of Oklahoma City under Part 150 were in compliance with applicable requirements. On September 19, 1991, the Administrator approved the noise compatibility program. Most of the recommendations of the program were approved in full.

EFFECTIVE DATE: The effective date of the FAA's approval of the Will Rogers World Airport's noise compatibility program is September 19, 1991.

FOR FURTHER INFORMATION CONTACT: Dean A. McMath, Department of Transportation, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas, 76193–0610, (817) 624–5594. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Will Rogers World Airport, effective September 19, 1991.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal

Program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150p, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FFA implementing specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports Division Office in Forth Worth, Texas.

The city of Oklahoma City submitted to the FAA on February 1, 1991, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from August 30, 1988 through March 21, 1991. The Will Rogers World Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on March 26, 1991. Notice of this determination was published in the **Federal Register** on April 5, 1991.

The Will Rogers World Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to (or beyond) the year 1995. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on March 26, 1991, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained five proposed actions for noise mitigation (on and/or off) the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective September 19, 1991.

Outright approval was granted for four of the specific program elements. Program Element 5 was approved in part for purposes of part 150. This action recommended acquisition of homes within the 65 and 70 annual average day/night sound level contours as well as businesses within said contours which are dependent on relocating residents. While the homes are approved, substantiation of the business's dependence on the home being acquired must be established before funding for acquisition can be approved. The program elements approved in full included:

a. Noise complaint and response and investigation system,

b. The update and review of the program at the end of the 5-year or before if deemed necessary,

c. Noise abatement actions involving the voluntary preferential runway use of Runways 17L and 17R to keep traffic south of the airport over less populated areas as much as possible, and voluntary restriction of arrivals on Runway 17L and departures on Runway 35R between the hours of 10 p.m. and 7 a.m. to keep nightime intrusions over homes located east of the airport at a minimum, and

d. The continued enforcement of existing Airport Overlay Zoning Districts along with their requirements as they apply to Will Rogers World Airport.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on September 19, 1991. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available at the FAA office listed above and at the administrative offices of the city of Oklahoma City.

Issued in Fort Worth, Texas, October 4, 1991.

Otis T. Welch,

Manager, Airports System Capacity and Planning Branch.

[FR Doc. 91-25381 Filed 10-21-91; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-91-37]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously reviewed, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 12, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW.,

Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC., on October 11, 1991.

Pamela Trebbe,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 26597
Petitioner: Buffalo Airways, Inc.
Sections of the FAR Affected: 14 CFR 91.805 and part 36
Description of Relief Sought: To allow Buffalo Airways, Inc. to deviate from the maximum allowable takeoff gross weight for the B–707–300C airplane, and also allow them to operate the B–707–300C up to a maximum certificated takeoff gross weight in accordance with the B–707–300C basic approved flight manual.

Docket No.: 26611
Petitioner: Air Logistics
Sections of the FAR Affected: 14 CFR 135.63(c)
Description of Relief Sought: To allow Air Logistics to omit listing the center of gravity limits for each flight on the load manifest.

Docket No.: 26649
Petitioner: Boeing Commercial Airplane Group
Sections of the FAR Affected: 14 CFR 25.562
Description of Relief Sought: To allow certification of the Boeing Model 777–200 airplane without having to test the flight deck seats with floor warpage.

Docket No.: 26650
Petitioner: Samoa Air
Sections of the FAR Affected: 14 CFR 135.151
Description of Relief Sought: To allow Samoa Air to operate their fleet of three aircraft after October 11, 1991, without a cockpit voice recorder installed.

Docket No.: 26661
Petitioner: Douglas Aircraft Company
Sections of the FAR Affected: 14 CFR 25.813
Description of Relief Sought: To allow petitioner to install a door between the forward end of galleys G4 and G4B on MD–11 aircraft to preclude noise from the work areas of the galley complex. This door would be closed only during flight and will be latched open for taxi, takeoff and landing

Dispositions of Petitions

Docket No: 25608
Petitioner: Aviation Methods, Inc.
Sections of the FAR Affected: 14 CFR 91.511(a)(1)(i) and (a)(1)(iv), 91.511(a)(2) and 135.165(b)(5), (b)(6), and (b)(7)
Description of Relief Sought/ Disposition: To permit extended overwater flights with one long-range navigation system (LRNS) and one high frequency (HF) communications system.

Partial Grant, October 8, 1991, Exemption No. 5347

Docket No: 26014
Petitioner: Aloha Airlines, Inc., and Hawaiian Airlines, Inc.
Sections of the FAR Affected: 14 CFR 91.117(a)
Description of Relief Sought/ Disposition: To allow petitioners to operate their aircraft at indicated air-speeds greater than 250 knots below 10,000 feet between 3 and 12 miles offshore the State of Hawaii.

Denial, September 18, 1991, Exemption No. 5342

Docket No: 26400
Petitioner: Air Transport Association of America
Sections of the FAR Affected: 14 CFR 121.314 and 135.169(d)
Description of Relief Sought/ Disposition: To amend Exemption No. 5288 which permits the operation of airplanes that do not comply with §§ 121.314 and 135.169(d) after March 20, 1991, under a specified schedule, depending on model. In addition, the exemption grants fleet wide relief for repairs. This relief is divided into two parts: (1) new repairs must comply with the regulations after September 20, 1991, and (2) all repairs must be in compliance after March 20, 1992.

Amendment to Partial Grant, September 24, 1991, Exemption No. 5288A

Docket No: 26429
Petitioner: Metroflight, Inc.
Sections of the FAR Affected: 14 CFR 135.293(b) and 135.297(a)
Description of Relief Sought/ Disposition: To allow Metroflight, Inc. to conduct an instrument proficiency check every 12-months followed by training to proficiency six months later for any person serving as a pilot-in-command of a aircraft under instrument flight rules (IFR). Also, to allow petitioner's request for simulator training to proficiency to be substituted for every other competency check required for second-in-command (SIC).

Grant, October 3, 1991, Exemption No. 5346

Docket No: 26525
Petitioner: FR Aviation Limited
Sections of the FAR Affected: 14 CFR 61.77(a)
Description of Relief Sought/ Disposition: To allow FR Aviation Limited pilots to be issued special purpose pilot certificates to perform pilot duties on civil airplanes of U.S. registry (Falcon 20s, registration numbers N901FR to N908FR), without these airplanes meeting the passenger seating configuration and payload capacity requirements of § 61.177(a).

Grant, October 3, 1991, Exemption No. 5345

Docket No: 26523
Petitioner: The Lone Star Flight Museum
Sections of the FAR Affected: 14 CFR 45.25 and 45.29
Description of Relief Sought/ Disposition: To permit aircraft owned and operated by The Lone Star Flight Museum, or its members, to operate with 2-inch marks in locations other than those provided by the Federal Aviation Regulations.

Grant, September 30, 1991, Exemption No. 5344

[FR Doc. 91–25380 Filed 10–21–91; 8:45 am]
BILLING CODE 4910–13–M

General Aviation and Business Airplane Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration General Aviation and Business Airplane Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on November 5, 1991, at 9 a.m. Arrange for oral presentations by October 26, 1991.

ADDRESSES: The meeting will be held in the McCracken Room, 10th Floor, FAA Headquarters, 800 Independence Avenue, SW., Washington, DC, 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Marge Ross, Aircraft Certification Service (AIR–1), 800 Independence

Avenue, SW., Washington, DC 20591, telephone (202) 267–8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is given of a meeting of the General Aviation and Business Airplane Subcommittee to be held on November 5, 1991, in the McCracken Room, FAA Headquarters, 800 Independence Avenue, SW., Washington, DC 20591. The agenda for this meeting will include:

- A briefing from the staff of the Aircraft Certification Small Airplane Directorate on the Directorate's rulemaking program, international harmonization activities, and the relevant priorities for those programs.
- A briefing from the staff of the FAA Aircraft Certification Small Airplane Directorate on the Commuter Aging Aircraft Program, including rulemaking activities.

The subcommittee will then develop recommendations to the Director, Aircraft Certification Service, as to the working groups the General Aviation and Business Airplane Subcommittee should be asked to form, and the tasks to assign to each working group.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by October 26, 1991, to present oral statements to the committee at any time by providing 18 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **"FOR FURTHER INFORMATION CONTACT."**

Issued in Washington, DC, on October 16, 1991.

William J. Sullivan,

Executive Director, General Aviation and Business Airplane Subcommittee Aviation Rulemaking Advisory Committee.

[FR Doc. 91–25372 Filed 10–21–91; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; General Aviation and Business Airplane Subcommittee

AGENCY: Federal Aviation Admintistration (FAA), DOT.

ACTION: Notice of establishment of General Aviation and Business Airplane Subcommittee.

SUMMARY: Notice is given of the establishment of General Aviation and Business Airplane Subcommittee on the FAA Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, General Aviation and Business Airplane Subcommittee, Aircraft Certification Service (AIR–3), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–9554; FAX: (202) 267–9562.

SUPPLEMENTARY INFORMATION: On January 14, 1991, the Federal Aviation Administration (FAA) announced the establishment of the Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991). The committee charter became effective on February 5, 1991, when notices of establishment were sent to the appropriate Congressional Committees. The advisory committee provides advice and recommendations to the FAA concerning the full range of the FAA's rulemaking activity with respect of safety-related issues, including aircraft certification. The committee held its first meeting at Baltimore, MD, on May 31, 1991 (56 FR 20492, May 3, 1991). At that meeting, the committee formed several subcommittees and charged them with developing advisory recommendations in different safety-related areas. The subcommittee Chairs and Executive Directors were named, and the member organizations identified. Finally, several specific tasks were assigned to the various subcommittees. At this first meeting, the committee also adopted procedures concerning the operation of the committee, its subcommittees, and their working groups.

Under the procedures adopted by the full committee, each subcommittee meeting is open to the public, except as authorized in section 10(d) of the Federal Advisory Committee Act. Also, notice is given beforehand of the subcommittee meeting agenda. A subcommittee may form working groups made up of experts from those having an interest in an issue to do tasks assigned to the subcommittee. Working group meetings need not be open to the public. This is because working groups must bring their work product back to the subcommittee for full, open, and substantive discussion, and may not communicate directly with the FAA. The subcommittee may: (1) Accept a working group work product and send it directly to the FAA; (2) Modify the work product and send it directly to the FAA; or (3) Return the work product to the working group with instructions for further activity. Thus, while the functions of a subcommittee are solely advisory, they create a framework within which interested parties may negotiate proposed or final rules and present their consensus to the FAA for action. The more complete these products, the more likely they are to be accepted by the FAA without change and formally published as proposed or final rules. The activities of the Aviation Rulemaking Advisory Committee, and its subcommittees, are consistent with the newly enacted Negotiated Rulemaking Act of 1990 (Public Law 101–648).

The General Aviation and Business Airplane Subcommittee will provide advice and recommendations to the Director, Aircraft Certification Service, regarding the airworthiness standards for standard and commuter category airplanes and engines in part 23 of the Federal Aviation Regulations, and parallel provisions in part 91 and 135 of the Federal Aviation Regulations. The membership of the General Aviation and Business Airplane Subcommittee consists solely of the following members of the Aviation Rulemaking Advisory Committee:

- Aerospace Industries Association.
- Aircraft Electronics Association.
- Aircraft Owners and Pilots Association.
- Air Line Pilots Association.
- Association Europenne des Constructeurs de Material Aerospatiale.
- Experimental Aircraft Association.
- Flight Safety Foundation.
- General Aviation Manufacturers Association.
- Joint Aviation Authorities.
- National Agricultural Aviation Association.
- National Air Transportation Association.
- National Business Aircraft Association.
- Regional Airline Association.
- Soaring Society of America.

Mr. Bernard Brown, Vice-President Technical Support, British Aerospace, Inc., will serve as the Chair of the General Aviation and Business Airplane Subcommittee and represent Association Europenne des Constructeurs de Material Aerospatiale.

The date, place, and agenda for the first meeting of the General Aviation and Business Airplane Subcommittee is announced elsewhere in this issue of the **Federal Register**. The Secretary of Transportation has determined that the formation and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law.

Issued in Washington, DC, on October 16, 1991.

William J. Sullivan,

Executive Director, General Aviation and Business Airplane Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-25371 Filed 10-21-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

General Counsel

Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

This memo is being republished to list a new board member.

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 4), and pursuant to the Civil Service Act, I hereby appoint the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Dennis I. Foreman, Deputy General Counsel
2. David L. Jordan, Deputy Chief Counsel
3. Patrick J. Dowling, Associate Chief Counsel (Enforcement Litigation) designate
4. James F. Malloy, Assistant Chief Counsel (Financial Institutions & Products)
5. David E. Gaston, Mid-Atlantic Regional Counsel
6. Harold Friedman, Houston District Counsel

This publication is required by 5 U.S.C. 4314(c)(4).

Abraham N.M. Shashy, Jr.

Chief Counsel.

[FR Doc. 91-25334 Filed 10-21-91; 8:45 am]

BILLING CODE 4830-01-M

Office of Thrift Supervision

[AC-47; OTS No. 0917]

First Federal Savings and Loan Association of Covington, Covington, KY; Final Action; Approval of Conversion Application

Notice is hereby given that on October 10, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Covington, Covington, Kentucky for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Office of Thrift Supervision, Cincinnati Area Office, 525 Vine Street, Suite 700, Cincinnati, Ohio 45202.

Dated: October 15, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-25341 Filed 10-21-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-48; OTS No. 4105]

First Federal Savings Bank, Bessemer, AL; Final Action; Approval of Conversion Application

Notice is hereby given that on October 11, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of First Federal Savings Bank, Bessemer, Alabama for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, Atlanta, Georgia 30309.

Dated: October 15, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-25342 Filed 10-21-91; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 204
Tuesday, October 22, 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 COMMUNICATIONS COMMISSION

October 17, 1991.

FCC To Hold Open Commission Meeting, Thursday, October 24, 1991

The Federal Communications Commission will hold an open Meeting on the subjects listed below on Thursday, October 24, 1991, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No., Bureau, and Subject

1—Common Carrier—Title: AT&T Communications, Revisions to Tariff F.C.C. No. 12, Memorandum Opinion and Order on Remand (CC Docket No. 87–568). Summary: The Commission will consider adoption of a *Memorandum Opinion and Order on Remand.*

2—Common Carrier—Title: TELEPHONE COMPANY-CABLE TELEVISION Cross-Ownership Rules, Sections 63.54–63.58 (CC Docket No. 87–26). Summary: The Commission will consider adoption of a *Further Notice of Proposed Rule Making, First Report and Order and Second Further Notice of Inquiry* concerning participation of telephone common carriers in video services.

3—Mass Media—Title: Amendment of Part 73 of the Commission's Rules Regarding Broadcast Hoaxes. Summary: The Commission will consider adoption of a *Notice of Proposed Rule Making* concerning broadcast hoaxes.

4—Mass Media—Title: Evaluation of the Syndication and Financial Interest Rules (MM Docket No. 90–162). Summary: The Commission will consider adoption of a *Memorandum Opinion and Order* (on reconsideration) concerning the syndication and financial interest rules.

5—Mass Media Office of Engineering and Technology—Title: Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service (MM Docket No. 87–268). Summary: The Commission will consider adoption of a *Notice of Proposed Rule Making* proposing policies and rules for implementing Advanced Television service in this country.

6—Office of Engineering and Technology—Title: Amendment of the Commission's Rules to Establish New Personal Communications Service (GEN Docket No. 90–314, RM–7140, RM–7175 & RM–7618). Summary: The Commission will consider adoption of a *Policy Statement and Order* concerning establishment of new personal communications services.

7—Private Radio—Title: Amendment of Part 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations (FR Docket No. 90–481, RM–6910). Summary: The Commission will consider adoption of a *Report and Order* that clarifies and modifies certain rules and policies regarding station construction, operation, discontinuance of operations, license renewal, and license reinstatement in the private land mobile radio services. The Commission also will consider whether to establish a "finder's preference" program.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632–5050.

Issued: October 17, 1991.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–25474 Filed 10–18–91; 10:30 am]

BILLING CODE 6712-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, October 28, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 18, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–25561 Filed 10–18–91; 3:53 pm]

BILLING CODE 6210-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–91–32]

TIME AND DATE: November 5, 1991 at 10:30 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and complaints.
5. Inv. No. 701–TA–311 (Preliminary) and 731–TA–532/537 (Preliminary) (Certain circular, welded, non-alloy steel pipes and tubes from Brazil, Korea, Mexico, Romania, Taiwan, and Venezula)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 205–2000.

Dated: October 16, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–25512 Filed 10–18–91; 1:44 pm]

BILLING CODE 7020-02-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, October 29, 1991.

PLACE: Third Floor Conference Room, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20594

STATUS: The first item is open to the public. The last item is closed to the public under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

5426A—Marine Accident Report: Explosion and Fire Aboard the U.S. Tankship JUPITER, Bay City, Michigan, September 16, 1990.

5577—Opinion and Order: Administrator v. Doll, Docket SE–9988; disposition of Administrators Motion to Dismiss Appeal.

NEWS MEDIA CONTACT: Alan Pollock telephone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty (202) 382–6526.

Dated: October 18, 1991.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 91–25562 Filed 10–18–91; 3:57 pm]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 21, 28, November 4, and 11, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 21

Tuesday, October 22

2:00 p.m.
Briefing on Status of Yankee Rowe (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 28—Tentative

Tuesday, October 29

1:30 p.m.
Briefing on Status of Advanced Reactor Programs (Public Meeting)

Wednesday, October 30

10:00 a.m.
Briefing on Site Decommissioning Management Plan (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
3:30 p.m.
Briefing on Status of Emergency Planning Issues for Pilgrim (Public Meeting)

Week of November 4—Tentative

Tuesday, November 5

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of November 11—Tentative

Friday, November 15

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: October 17, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91–25556 Filed 10–18–91; 3:11 pm]

BILLING CODE 7590–01–M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552B), notice is hereby given that at 4:03 p.m. on Tuesday, October 15, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to the resolution of failed thrift institutions.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr.. (Appointive), seconded by Vice Chairman Andrew C. Hove, Jr., and concurred in by Chairman L. William Seidman, Director Robert L. Clarke (Comptroller of the Currency), and Director T. Timothy Ryan, Jr.. (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552B).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550–17th Street, NW., Washington, DC.

Dated: October 17, 1991.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Executive Secretary.

[FR Doc. 91–25458 Filed 10–18–91; 10:22 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published October 21, 1991.

STATUS: Open/closed.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Thursday, October 17, 1991.

CHANGE IN THE MEETING: Additional meeting/deletion.

The following items will be considered at an open meeting on Thursday, October 24, 1991, at 10:00 a.m.

1. Consideration of a proposed rule change submitted by the New York Stock Exchange, Inc. to approve on a permanent basis provisions of Exchange Rule 80A relating to the imposition of certain conditions on the execution of index arbitrage orders and the trading of baskets of stock through the NYSE's Exchange Stock Portfolio ("ESP") Service when the Dow Jones Industrial Average advances or declines 50 points or more from its closing value on the previous trading day. For further information, please contact Mark NcNair (202) 272–2882.

2. Consideration of whether to adopt a new rule, Rule 3a–6 under the Investment Company Act of 1940 (the "Act"). The rule would provide an exception from the definition of "investment company" for foreign banks and foreign insurance companies for all purposes under the Act. Adoption of the rule would permit foreign banks, foreign insurance companies, and related entities such as finance subsidiaries and holding companies, to offer and sell their securities in the United States without registering as investment companies under the Act or seeking individual exemptions from the Act's requirements. For further information, please contact Eric Freed at (202) 272–7304.

The following items will not be considered at a closed meeting on Tuesday, October 22, 1991, at 2:30 p.m.

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.

Commissioner Schapiro, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times, changes in Commission priorities required alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: George Kramer at (202) 272–2000.

Dated: October 18, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–25503 Filed 10–18–91; 1:43 pm]

BILLING CODE 8010–01–M

federal register

Tuesday
October 22 1991

Part II

Environmental Protection Agency

40 CFR Part 112

Oil Pollution Prevention; Non-transportation-related Onshore and Offshore Facilities; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[SW H-FRL-3671-4]

RIN 2050-AC62

Oil Pollution Prevention; Non-transportation-related Onshore and Offshore Facilities

AGENCY: Environmental Protection Agency (EPA).
ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency is proposing to revise the Oil Pollution Prevention regulation (40 CFR part 112) promulgated under section 311(j)(1)(C) of the Clean Water Act (CWA), as amended by the Oil Pollution Act of 1990. This proposed rule establishes requirements for Spill Prevention, Control, and Countermeasures (SPCC). Plans to prevent spills of oil by non-transportation-related onshore and offshore facilities into the waters of the United States or adjoining shorelines. The proposed revision involves changes in the applicability of the regulation and the required procedures for the completion of SPCC Plans, as well as the addition of a facility notification provision. The proposed rule also reflects changes in the jurisdiction of section 311 of the CWA made by 1977 and 1978 amendments to the CWA.

DATES: EPA will consider comments submitted on or before December 23, 1991.

ADDRESSES:

Comments: Comments should be submitted in triplicate to: Emergency Response Division, Attention: Superfund Docket Clerk, Docket Number SPCC-1P, Superfund Docket, room M2427, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Docket: Copies of materials relevant to this rulemaking are contained in the Superfund Docket, room M2427 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 [Docket Number SPCC-1P]. The docket is available for inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays. Appointments to review the docket should be made by calling 1-202/260-3046. The public may copy a maximum of 267 pages from any regulatory docket at no cost. If the number of pages copied exceeds 267, however, a charge of 15 cents will be incurred for each page after 100 pages.

FOR FURTHER INFORMATION CONTACT: Monica L. McEaddy, Response Standards and Criteria Branch, Emergency Response Division (OS-210), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 at 1-202-260-1358 or Bobbie Lively-Diebold at 1-703-356-8774; the ERNS/SPCC Information line at 1-202-260-2342; or RCRA/Superfund Hotline at 1-800-424-9346 (in the Washington, DC metropolitan area, 1-703-920-9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 1-800-553-7672 (in the Washington, DC metropolitan area, 1-703-486-3323).

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction
  A. Statutory Authority
  B. Background of this Rulemaking
  C. The Oil Pollution Act of 1990 (OPA)
II. General Issues
  A. Notification
  B. Contingency Planning
  C. New Discretionary Provisions
III. Proposed Changes in Each Section of 40 CFR Part 112
  A. Section 112.1—General Applicability and Notification
  B. Section 112.2—Definitions
  C. Section 112.3—Requirements to Prepare and Implement a Spill Prevention, Control, and Countermeasures Plan
  D. Section 112.4—Amendment of SPCC Plans by Regional Administrator
  E. Section 112.5—Amendment of SPCC Plans by Owners or Operators
  F. Section 112.6—Civil Penalties for Violation of the Oil Pollution Prevention Regulation
  G. Section 112.7—Spill Prevention, Control, and Countermeasures Plan General Requirements
  H. Section 112.8—Spill Prevention, Control, and Countermeasures Plan Requirements for Onshore Facilities (Excluding Production Facilities)
  I. Section 112.9—Spill Prevention, Control, and Countermeasures Plan Requirements for Onshore Oil Production Facilities
  J. Section 112.10—Spill Prevention, Control, and Countermeasures Plan Requirements for Onshore Oil Drilling and Workover Facilities
  K. Section 112.11—Spill Prevention, Control, and Countermeasures Plan Requirements for Offshore Oil Drilling, Production, or Workover Facilities
IV. Relationship to Other Programs
  A. Underground Storage Tanks
  B. State Programs
  C. Superfund Amendments and Reauthorization Act of 1986 (SARA) Title III Integration With Local Emergency Planning
  D. Wellhead Protection
  E. Flood-Related Requirements
  F. Occupational Safety and Health Administration
V. Request for Comments
VI. Regulatory Analyses
  A. Economic Analyses
  B. Executive Order No. 12291
  C. Regulatory Flexibility Act
  D. Paperwork Reduction Act
List of Subjects

I. Introduction

A. Statutory Authority

Section 311(j)(1)(C) of the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, also known as the Clean Water Act (CWA), authorizes the President to issue regulations establishing procedures, methods, equipment, and other requirements to prevent discharges of oil from vessels and facilities and to contain such discharges. The authority to regulate non-transportation-related onshore and offshore facilities under section 311(j)(1)(C) of the CWA was delegated by the President to the Administrator of the U.S. Environmental Protection Agency (EPA or the Agency) by Executive Order 11735. In this same Executive Order, authority over onshore and offshore transportation-related facilities and vessels was delegated to the department in which the U.S. Coast Guard (USCG) is operating (currently, the U.S. Department of Transportation). A Memorandum of Understanding (MOU) between the Secretary of Transportation and the EPA Administrator, dated November 24, 1971 (36 FR 24080), establishes the responsibilities of EPA and the Department of Transportation for purposes of administering their respective spill prevention programs. The definitions set forth in this MOU (i.e., the definitions of "non-transportation-related onshore and offshore facilities" and "transportation-related onshore and offshore facilities") are included as an appendix to 40 CFR part 112.

B. Background of This Rulemaking

The Oil Pollution Prevention regulation, also known as the Spill Prevention, Control, and Countermeasures (SPCC) regulation, was originally promulgated on December 11, 1973 (38 FR 34164), under the authority of section 311(j)(1)(C) of the CWA. The regulation established spill prevention procedures, methods, and equipment requirements for non-transportation-related facilities with aboveground (non-buried) oil storage capacity greater than 1,320 gallons (or greater than 660 gallons aboveground in a single tank) or buried underground oil storage capacity greater than 42,000 gallons. Regulated facilities were also limited to those that, because of their location, could reasonably be expected to discharge oil into the navigable

waters of the United States or adjoining shorelines.

In addition to the Oil Pollution Prevention regulation, EPA has promulgated related regulations defining oil discharges that may be harmful (40 CFR part 110) and procedures for imposing the civil penalties provided for in the Oil Pollution Prevention regulation (40 CFR part 114). As described below, penalty provisions have been revised by the Oil Pollution Act of 1990 (OPA). The USCG has promulgated regulations on oil pollution prevention for vessel transfer facilities (the USCG regulations do not apply to pipelines or other modes of transportation) (33 CFR part 154). pursuant to the November 24, 1971, MOU described above. The USCG also has promulgated requirements for the reporting of oil discharges (33 CFR part 153), and regulations relating to discharges from ships (33 CFR part 155).

Two previous revisions have been made to the Oil Pollution Prevention regulation. On August 29, 1974, the regulation was amended (39 FR 31602) to set out the Agency's policy on civil penalties for violation of the CWA section 311 requirements. On March 26, 1976, 40 CFR part 112 was again amended (41 FR 12567), primarily to clarify the criteria for determining whether or not a facility is subject to the regulation. Other revisions made in the March 26, 1976, rule clarified that SPCC Plans must be in written form and specified the procedures for development of SPCC Plans for mobile facilities.

Implementation of the regulation since the 1976 revisions has indicated a need for other changes, primarily for purposes of clarification and simplification. Changes in 40 CFR part 112 also have been made necessary by amendments to CWA section 311.

On May 20, 1980 (45 FR 33814), EPA proposed revisions to the Oil Pollution Prevention regulation similar to revisions proposed today. These proposed revisions would have reflected changes in the jurisdiction of CWA section 311 made by the 1977 CWA amendments. Also proposed were requirements concerning new facilities, the content of SPCC Plans, the availability of SPCC Plans for review by EPA personnel, and the review of SPCC Plans by owners or operators.

One of the revisions proposed on May 20, 1980, was a clarification that certain "guidelines" in § 112.7 are mandatory rather than discretionary. Based on a subsequent decision by the Agency that the proposed modifications to 40 CFR part 112 were not required at that time, the revisions proposed on May 20, 1980, were not finalized. As described below, however, continuing experience with administering this program demonstrates a need for the clarifications to 40 CFR 112.7. Accordingly, the Agency is proposing certain changes to 40 CFR 112.7 that are similar to those proposed on May 20, 1980.

On January 2, 1988, the collapse of a four-million-gallon aboveground storage tank owned by the Ashland Oil Company in Floreffe, Pennsylvania, resulted in a spill of approximately 3.8 million gallons of diesel fuel. Of this amount, approximately 750,000 gallons of diesel fuel were released into the Monongahela River. This event led to the formation of an Oil Spill Prevention, Control, and Countermeasures Program Task Force (the SPCC Task Force) to examine Federal government regulations governing spills of oil from aboveground storage tanks. The SPCC Task Force was composed of senior personnel from EPA Headquarters, Regional offices, other Federal agencies, and State offices with significant oil spill response responsibilities. The Task Force issued its findings and recommendations in a May 13, 1988, report.[1] The Task Force report focused on the prevention of large catastrophic spills, but made recommendations on many aspects of the Federal oil spill prevention, control, and countermeasures program.

The SPCC Task Force recommended that EPA clarify that certain provisions described in the Oil Pollution Prevention regulation in terms that could be interpreted as guidelines are required practices. The Task Force also recommended that EPA establish additional technical requirements for all facilities subject to the regulation, and that EPA expand the scope of the regulation to include requirements for facility-specific oil spill contingency planning. The Task Force further found that EPA does not have an adequate inventory of facilities subject to the regulation and recommended that EPA gather specific information about these facilities (e.g., the number of aboveground storage tanks at a facility). The Task Force also recommended strengthening the facility inspection program to better identify violations and enforce compliance. A subsequent General Accounting Office (GAO) report contained similar recommendations.[2]

As a result of major oil spills such as the Ashland Oil Company spill discussed previously and the findings from the SPCC Task Force and the GAO reports, EPA is today proposing revisions to 40 CFR part 112.

EPA has decided to address the SPCC Task Force findings and recommendations, together with OPA requirements, in two phases. A two-phase approach has been chosen because several of the Task Force recommendations require further information gathering and analysis before determining specific additional changes to the existing regulation, whereas other recommendations can be implemented more readily. Phase One revisions, which include provisions that generally do not require substantial additional Agency data gathering (e.g., technical amendments to clarify regulatory language, notification requirements), are being proposed today. Phase Two revisions, which will be addressed in a separate rulemaking and proposed at a later date, will address other, more substantive regulatory recommendations, such as facility-specific contingency planning and aboveground storage tank integrity testing requirements. Phase Two will also implement applicable requirements of the OPA. For further discussion of the Phase Two revisions as they relate to the OPA, see Section I.C. of this preamble.

After consideration of comments received in response to this proposed rule, a final rule will be promulgated. In addition to a general request for comments, the Agency requests comments on specific proposed revisions throughout the preamble. The provisions are also summarized in Section V of this preamble. If the comments received indicate sufficient need, the Agency will consider holding a public hearing on the proposed revisions to permit further expression of views prior to the final rulemaking. EPA will publish a notice of its intent to hold any such public hearing in the **Federal Register**. Any statements made at such a hearing would be included in the public record of the rulemaking.

C. The Oil Pollution Act of 1990 (OPA)

The OPA was signed into law by the President on August 18, 1990. The OPA contains significant modifications to many of the provisions of section 311 of the CWA, including section 311(j). The

[1] U.S. Environmental Protection Agency, "The Oil Spill Prevention, Control, and Countermeasures Program Task Force Report," Interim Final Report, May 13, 1988. This document is available for inspection at the Superfund Docket, room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[2] General Accounting Office. "Inland Oil Spills: Stronger Regulation and Enforcement Needed to Avoid Future Incidents," February 1989 (GAO/RCED–89–65). This document is available for inspection at the Superfund Docket, room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

specific language of section 311(j)(1)(C), however, is not changed. The principal provisions of the OPA that will impact the SPCC program are summarized below.

Section 1004 of the OPA sets a number of limits on liability of owners or operators of vessels and facilities for oil spills to U.S. waters. The liability limits include $350 million for onshore facilities and deepwater ports; $75 million plus removal costs for offshore facilities; and $1,200 per gross ton or up to $10 million, whichever is greater, for tank vessels. The President must report to the Congress on the desirability of adjusting these liability limits, and EPA is addressing this issue for onshore, non-transportation-related facilities. There is no liability limit when spills are caused by willful misconduct or gross negligence or by violation of Federal safety, construction, or operating regulations; or in cases of failure or refusal to report the discharge, failure to cooperate in oil removal actions, or comply with orders issued by the Federal agency in charge of cleanup.

Under OPA section 1002, the scope of damages for which oil dischargers may be liable is expanded to include damages for injury to, or loss of subsistence use of, natural resources; damages for injury to property; loss of revenues, profits, or earning capacity; and costs of public services during or after oil removal activities.

The OPA establishes that the Oil Spill Liability Trust Fund under section 9509 of the Internal Revenue Code of 1986 shall be used to pay for removal costs and damages not recovered from responsible parties. The existing fund under CWA section 311(k) and other oil spill compensation and liability funds are dissolved; the assets and liabilities of these funds are consolidated in the Oil Spill Liability Trust Fund.

Section 4113 of the OPA requires the President to conduct a study on whether liners or other secondary means of containment should be used to prevent or help detect leaks from onshore bulk oil storage facilities. EPA is currently undertaking such a study and will prepare a Report to Congress on the results.

Under OPA section 4201(a), Federal authority under the CWA for the removal of oil and hazardous substances defined under the CWA is expanded; for example, the Federal government is required to direct removal actions for discharges posing a substantial threat to the public health or welfare of the U.S. Also, new discretionary authority to direct the spiller's removal actions under other circumstances has been added to existing authorities.

OPA section 4202 amends CWA section 311(j) to require the development of Area Contingency Plans to help ensure the removal of a worst-case spill from a vessel or facility in or near the area covered by the plan. The President must designate inland and coastal areas for which plans are to be prepared; and for each of these areas, an Area Committee must be established consisting of qualified Federal, State, and local officials. Each Area Committee in inland areas must prepare an Area Contingency Plan and submit it to the President. The President must then review each plan and either approve or require amendments to it.

Section 4202 of the OPA also amends CWA section 311(j) to require that the President issue regulations for owners or operators of certain facilities and vessels to prepare response plans for worst-case oil and hazardous substances discharges. Onshore facilities that can cause "substantial harm" in the event of a worst-case spill must submit their plans to the President. Of these plans, the President must review and issue determinations on plans for onshore facilities that can cause "significant and substantial harm."

Although the changes to the SPCC regulation proposed today do not directly incorporate requirements of the OPA, the notification requirement proposed today will assist in the implementation of many of these OPA requirements. This requirement will provide information on the number and location of facilities, as well as the size and number of tanks at each one. EPA expects that implementation of many of the OPA provisions related to non-transportation-related facilities will be delegated to EPA in a forthcoming Executive Order. As described in section II.A of this preamble, the facility data developed as a result of the notification requirement will assist EPA in its implementation of the response planning provisions of OPA section 4202 in Phase Two.

The SPCC Task Force concluded that aboveground storage tanks without secondary containment pose a particularly significant threat to the environment. The Phase One modifications would retain the existing requirement for facility owners or operators who are unable to provide certain structures or equipment for oil spill prevention, including secondary containment, to prepare facility-specific oil spill contingency plans in lieu of the prevention systems. In developing the Phase Two modifications, EPA will consider whether facility owners or operators with aboveground storage tanks, as well as others, should be required to prepare facility-specific contingency plans. Phase Two modifications will also address the requirements of a properly designed contingency plan and, as described above, will implement additional OPA requirements for facility response (contingency) plans, as appropriate.

Section 4301 of the OPA increases penalties under the CWA for violations resulting from discharges of oil or hazardous substances. Section 4301(a) amends the CWA to provide more stringent penalties for failure to notify the appropriate Federal agency of a discharge. The OPA provides for imprisonment of up to five years and a fine not exceeding $250,000 for an individual, or not more than $500,000 for an organization. Section 4301(b) establishes the penalty for failure to comply with regulations under CWA section 311(j) at $25,000 per day of violation. In addition to these civil penalties, section 4301(b) establishes administrative penalties of $10,000 per violation, not to exceed $25,000 for Class I penalties, and $10,000 per day per violation, not to exceed $125,000 for Class II penalties.

Section 4301(c) provides that violations of the prohibition on discharges of oil or hazardous substances in amounts that may be harmful are subject to criminal penalties established under section 309(c) of the CWA. These penalties are $2,500 to $25,000 and up to one year imprisonment for negligent violations, $5,000 to $50,000 and up to three years imprisonment for knowing violations, and up to $250,000 (or $1 million for organizations) and up to 15 years imprisonment for knowing endangerment.

II. General Issues

A. Notification

The SPCC Task Force found in its review of the SPCC program that information concerning the numbers, storage capacities, and locations of above ground oil storage facilities is needed to effectively administer the SPCC program. Therefore, EPA is proposing to require that all facilities that are currently subject to the Oil Pollution Prevention regulation by virtue of their aboveground oil storage capacity, or that are otherwise subject to the CWA and have above ground storage capacity greater than 1,320 gallons (or greater than 660 gallons in a single container), notify the Agency of certain SPCC-related facility

characteristics. Partially buried tanks and bunkered tanks, as defined in proposed § 112.2, are included in determining the capacity of aboveground storage, and facilities with such tanks are subject to the notification requirement. In addition, EPA is proposing that all facilities that become subject to this regulation in the future by virtue of their aboveground oil storage capacity must notify the Agency prior to beginning operations at the facility. Many facilities subject to the Oil Pollution Prevention regulation by virtue of their underground storage capacity are already subject to notification requirements under the Underground Storage Tank (UST) program (40 CFR part 280), and EPA is proposing to exempt many such UST-regulated facilities from the Oil Pollution Prevention regulation. The remaining SPCC-regulated facilities with only underground storage tanks, as defined in proposed § 112.2(v), would not be subject to the proposed notification requirement. The proposed notification provision in § 112.1(e) would require that facility owners and operators furnish their names; the name and address of the facility; the number and size of aboveground oil storage tanks at the facility; the facility's total aboveground oil storage capacity; the distance of the facility to the nearest navigable waters; the facility's Dun & Bradstreet D-U-N-S number, if available; and the facility's primary Standard Industrial Classification, if applicable and available. This information is to be supplied using a proposed standard form, which is included as appendix B of today's proposed regulation. In addition, the Agency is considering requiring information on the latitude and longitude of the facility, location of environmentally sensitive areas and potable water supplies, presence of secondary containment, spill history, leak detection equipment and alarms, age of tanks, and potential for adverse weather. This additional information would assist in implementing the facility response plan requirements that are mandated by the OPA. The facility response plan requirements will be proposed in the Phase Two rulemaking. Specifically, the information may be useful in determining which facilities could reasonably be expected to cause "substantial harm" or "significant and substantial harm" by discharging into the navigable waters, adjoining shorelines, or the exclusive economic zone and, therefore, must submit their facility response plan. EPA requests comments on collecting this additional information through the notification form. EPA also requests comments on additional information that could be used in developing Area Plans or in implementing the community right-to-know program described in section IV.C of this preamble.

The Agency proposes that the owner or operator of the facility would complete and send the form to the SPCC program office at EPA Headquarters within two months of the effective date of the final rule. The proposed notification would be a one-time requirement; a facility would not be required to notify EPA of changes in owner(s), operator(s), or the other required information elements. Any owner or operator who fails to notify or knowingly submits false information in a notification would be subject to a civil penalty. The Agency specifically requests comment on the proposed notification requirement and the proposed notification form.

The Agency expects to use data collected under the proposed notification requirement to develop a data base of facility-specific information. This data base may also include information on spills (obtained from spill reports submitted by facilities or from the Emergency Response Notification System (ERNS)) and various other types of information. The Agency will use the information in the data base to more effectively allocate SPCC program resources by prioritizing inspections and enforcement efforts and by determining the need for additional prevention requirements for certain categories of facilities (such as facilities with the potential to threaten major drinking water supplies or sensitive ecosystems).

The Agency is particularly interested in comment on alternate methods of facility notification. In particular, EPA is aware that facilities may already be required to submit Material Safety Data Sheets (MSDSs) and other information to State Emergency Response Commissions (SERCs), Local Emergency Planning Committees (LEPCs), and local fire departments under sections 311 and 312 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III). Comments are solicited concerning ways that these data submissions may be used to establish an inventory of facilities subject to this proposed rule.

B. Contingency Planning

EPA believes that facility-specific contingency planning in coordination with local authorities is an important part of any spill related preparedness program. The SPCC Task Force recommended that the Oil Pollution Prevention regulation be revised to require the inclusion of contingency plans in facility SPCC Plans, and that these plans be coordinated with existing State and local contingency planning groups.

EPA believes that, in general, a facility-specific contingency plan should contain provisions for discovery of a spill, emergency notification procedures, the name of the spill response coordinator, procedures for identifying personnel and equipment that may be needed, available equipment lists, available personnel lists, an identification of hazards, a vulnerability analysis, and an event and fault tree analysis.

The vulnerability analysis identifies areas of immediate concern following a spill event and provides an estimate of the area most likely to be affected. Examples of areas to be identified in the vulnerability analysis include, but are not limited to, population centers, wetlands, wellhead protection areas, and areas that may be inhabited by endangered species. In addition, the vulnerability analysis should identify sensitive ecosystems requiring special protection and drinking water suppliers who must be notified if a release occurs.

An event and fault tree analysis will identify potential spill scenarios. It is usually based on prior spills at the facility and can be used to estimate possible sources of leaks, spill sizes, pathways, and causes of spills at other facilities. Case studies of major spills show that close attention should be paid to the methods by which equipment and personnel may be obtained. Finally, the contingency plan should address disposal of recovered oil, used sorbents, and other materials. The Agency's experience at various spill sites also demonstrates the importance of addressing the location of off-site spill pathways in the contingency plan. Above all, a contingency plan needs to be workable and easy to follow in emergency situations. Facility personnel should be trained in the contingency plan procedures to improve their understanding of the plan and ensure that it is properly followed in emergencies.

The Agency is proposing in today's notice only to require elementary contingency planning steps that are currently included in most existing SPCC Plans, such as the inclusion in a facility's Plan of a list of contacts (e.g., the facility response coordinator, the National Response Center (NRC)). EPA is also proposing to clarify an existing requirement that facilities without

secondary containment or diversionary measures complete a site-specific contingency plan. Because as part of Phase Two EPA is currently considering requirements for more comprehensive facility-specific contingency plans in response to the recommendations of the Task Force and the requirements of the OPA, the Agency wishes to provide an opportunity for commenters to submit additional information and recommendations on contingency planning during the development of such requirements. Therefore, EPA is requesting comments and supporting data on oil spill contingency planning needs.

C. New Discretionary Provisions

In addition to proposing changes to clarify and strengthen the Oil Pollution Prevention regulation, EPA is proposing a number of provisions as recommendations. These new provisions are described individually in Section III of this preamble. Among the new recommendations are the following two provisions:

- *Proposed § 112.8(d)(4).* It is recommended that facilities have all buried piping [3] tested for integrity and leaks annually or have buried piping monitored monthly in accordance with the provisions of 40 CFR part 280. In addition, it is recommended that records of the testing or monitoring be kept for five years (does not apply to offshore facilities or production facilities).
- *Proposed § 112.8(d)(5).* It is recommended that facilities post vehicle weight restrictions to prevent damage to underground piping (does not apply to offshore facilities or production facilities).

EPA is proposing these two provisions and other provisions as recommendations rather than requirements. The Agency is concerned that these provisions may not for all facilities achieve the standard of provisions based on good engineering practice, which is the basic standard of the regulation. EPA, however believes that implementation of these provisions at most facilities would contribute to the facilities' overall effort to prevent oil discharge and to mitigate those spills that may occur. Consequently, EPA is proposing these discretionary provisions so that the owners and operators of facilities subject to the Oil Pollution Prevention Regulation can decide whether the suggested practices are warranted under the existing regulatory requirements. At many facilities the proposed provisions are consistent with the general requirement that the SPCC Plan be prepared in accordance with good engineering practices. At the same time, the Agency recognizes that for some facilities implementation of these provisions is inappropriate for technological or other reasons or is not necessary because of other facility-specific practices or circumstances. For such facilities, not implementing these discretionary provisions would be consistent with the existing requirement concerning good engineering practices.

The Agency requests comments and supporting data (including information on likely environmental impacts or benefits) regarding whether these discretionary provisions should be made requirements. EPA is particularly interested in receiving comments and information on the advisability of establishing the two provisions as requirements for large facilities, but as recommendations for small facilities. This is consistent with the SPCC Task Force recommendation that EPA regulate larger facilities more stringently than smaller facilities. EPA considered defining a "large facility" for this specific purpose as a facility with more than 42,000 gallons of SPCC-regulated storage capacity. The Agency believes that larger volumes of oil stored at a facility increases the chances of a spill occurring, and that spills from large-capacity facilities may be greater in magnitude than those from smaller facilities, thus posing a greater potential threat to the waters of the United States. Section 311(j)(1)(C) of the CWA, however, does not explicitly authorize differential requirements based on facility size. EPA is also requesting comment on the option of applying these provisions as requirements to all sizes of SPCC-regulated facilities under § 311(j)(1)(i) of the CWA.

In addition, EPA is requesting comments on two other practices that are not included in the proposed revisions. These practices are:

- That owners and operators of facilities affix a signed and dated statement to the SPCC Plan indicating that the revision has taken place and whether or not amendment of the Plan is required.
- That owners and operators of onshore facilities other than production facilities state the design capabilities of their drainage system in the SPCC Plan if the system is relied upon to control spills or leaks.

EPA believes that these practices may improve the quality of a facility's SPCC Plan and may be appropriate to include in the Oil Pollution Prevention regulation as discretionary practices. The Agency has not included these practices in the proposed rule because of the lack of data for the benefits likely to result from these practices. EPA specifically requests comments regarding the extent to which these provisions would further improve the effectiveness of the Oil Pollution Prevention regulation.

III. Proposed Changes in Each Section of 40 CFR Part 112

In this section, the principal changes and clarifications being proposed today to each of the sections of 40 CFR part 112 are discussed and explained. Minor grammatical and editorial changes also have been made to the text of the proposed rule. To more effectively organize § 112.7, it has been divided into five separate sections (proposed §§ 112.7, 112.8, 112.9, 112.10, and 112.11), based on facility type. This reorganization will aid in the clarification of SPCC Plan requirements for different types of facilities.

A. Section 112.1—General Applicability and Notification

The geographic scope of the applicability of the Oil Pollution Prevention regulation, which is stated in paragraphs (a), (b), and (d) of § 112.1, is proposed to be extended to conform with the 1977 CWA amendments that extended the geographic scope of EPA's authority under CWA section 311. CWA section 311(b)(1) as amended in 1977, establishes a national policy prohibiting discharges of oil or hazardous substances into or upon the navigable waters of the United States or adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act). As a result, the applicability of the SPCC regulations as stated in paragraphs (a) and (b) of § 112.1 and in subsequent paragraphs of the rule is proposed to be revised to reflect the statutory language.

In light of amendments to the CWA in 1978, EPA is revising the phrase "harmful quantities" in § 112.1(b). The revised phrase—"quantities that may be harmful, as described in part 110"—includes oil discharged in quantities that violate applicable water quality

[3] The change from the use of "pipeline" to "piping" is to eliminate any possible confusion between the regulation's use of "pipeline", and "pipelines" regulated by DOT's Office of Pipeline Safety.

standards, cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines (40 CFR 110.3).[4]

Since the implementation of the SPCC regulation in 1973, EPA has received numerous questions concerning the scope of the definition of oil. Section 311(a)(1) of the CWA defines "oil" as "oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil." EPA interprets this definition to include crude oil and refined petroleum products as well as non-petroleum oils such as vegetable and animal oils. The Agency solicits comments on the appropriateness of this interpretation for the SPCC program.

The facilities, equipment, and operations that are exempt from this regulation are described in § 112.1(d). EPA is proposing several changes to this section. In proposed paragraph (d)(1)(i), a reference to proposed § 112.1(b)(1), which delineates the scope of the Oil Pollution Prevention rule, has been added.

To avoid duplicative and unnecessarily burdensome regulation, the Agency is proposing in the new § 112.1(d)(4) to exempt underground storage tanks (defined by proposed § 112.2(v)) that are now subject to the technical requirements of EPA's Underground Storage Tank (UST) program (40 CFR part 280). In addition, EPA is proposing in § 112.1(d)(2)(i) to exclude the capacity of UST-regulated underground storage tanks from the calculation of underground oil storage capacity made to determine whether a facility is subject to this regulation. Under proposed § 112.7(a)(3), however, any facility subject to this regulation must have the location and contents of all tanks marked on the facility diagram for informational purposes.

Notwithstanding differences in the scope and focus of the SPCC and UST programs, EPA believes that the UST technical requirements codified in 40 CFR part 280 are consistent with the underlying regulatory purposes of the SPCC program and are equally protective for purposes of preventing discharges of oil into waters of the United States. For example, under the UST program, new and existing tanks must meet specific corrosion protection requirements, be equipped with catchment basins, automatic shutoff devices, and alarms, and be subjected to periodic tank tightness testing. These requirements achieve a level of protection needed to ensure that a discharge of oil will not reach bodies of water protected by the CWA.

It is important to note that the proposed § 112.1(d)(2)(i) and § 112.1(d)(4) exemptions apply only to UST-regulated tanks that meet the definition of "underground storage tank" proposed in § 112.2(v). The proposed rule makes this clear in § 112.1(b)(3), by providing that "bunkered tanks" and "partially buried tanks" (defined by the proposed § 112.2(c) and § 112.2(n), respectively), as well as tanks in subterranean vaults, are considered aboveground storage tanks for the purposes of this regulation and are subject to the requirements of the regulation. Compared to completely buried tanks, spills from these tanks are more likely to enter surface waters regulated under the CWA. For further discussion of the relationship of the SPCC program to the UST program, see Section IV.A. of this preamble.

EPA is proposing in both § 112.1(d)(2)(i) and (ii) to exempt from the calculation of storage capacity, tanks and facilities that are "permanently closed," as defined in the proposed § 112.2(o). This proposed approach results from experience gained by EPA in administering the SPCC program, which indicates that tanks and facilities properly closed on a permanent basis need not continue maintaining current SPCC Plans. Such tanks and facilities cannot reasonably be expected to discharge oil in quantities that may be harmful in the manner described in the proposed § 112.1(b)(1). Therefore, the Agency is proposing to exempt oil storage tanks meeting the criteria for being "permanently closed" in proposed § 112.2(o) and facilities at which all tanks are permanently closed. The Agency has considerable experience with applying the criteria to show that they are appropriate for defining SPCC-regulated facilities that do not represent a significant threat of a discharge of oil in quantities that may be harmful. However, the Agency specifically solicits comments on the appropriateness of these criteria, including supporting data and descriptions of suggested alternative criteria for defining "permanently closed" tanks.

Facilities with some permanently closed tanks, where other tanks contain sufficient capacity and are not permanently closed, remain subject to this regulation unless otherwise exempted under § 112.1(d). The Agency has also found that, in contrast to facilities and tanks that are permanently closed, facilities and tanks used for standby storage, seasonal storage, or temporary storage can reasonably be expected to discharge oil as described in proposed § 112.1(b)(1). EPA is, therefore, clarifying in proposed § 112.1(b)(2) that such facilities and tanks are not considered permanently closed.

To avoid redundancy with the requirements of the U.S. Department of the Interior's Minerals Management Service (MMS), the Agency is proposing in § 112.1(d)(3) to exempt from this regulation offshore oil production or exploration facilities subject to MMS Operating Orders, notices, and regulations. This proposal is based on analysis of the MMS Operating Orders and the conclusion that they require adequate spill prevention, control, and countermeasures practices that are directed more specifically to the facilities subject to these requirements.

As described in section II.A of this preamble, EPA is proposing a new facility notification requirement as § 112.1(e). Notification would be provided to EPA on a standard form, which is proposed as appendix B of 40 CFR part 112.

EPA is proposing to amend current § 112.1(e) (redesignated as proposed § 112.1(f)) to clarify that adherence to the SPCC regulation does not relieve facility owners and operators from complying with applicable local, State, and Federal regulations. These regulations include, but are not limited to, those issued by the USCG, the Occupational Safety and Health Administration (OSHA), the Federal Emergency Management Agency (FEMA), and EPA's UST program. The Agency is also proposing that owners and operators consider current applicable regulations, standards, and codes, including certain standards and recommended practices established by the American Petroleum Institute (API) (series 12, 620, and 650), the National Fire Protection Association (NFPA) (30 and 30A), the American Society of Mechanical Engineers (ASME) Standards, the National Association of Corrosion Engineers (NACE) Standards, American National Standards Institute (ANSI) (B31.3), and Underwriters Laboratories (UL) Standards, in determining practices that may be required for particular facilities by the requirement that all SPCC Plans be prepared in accordance with good engineering practice. The standard of good engineering practice, which applies to all SPCC Plans, will require that

[4] Amendments to the CWA made by the OPA in 1990 broaden the concept of quantities that may be harmful to include not only "the public health or welfare" but also "the environment."

appropriate provisions of applicable codes, standards, and regulations be incorporated into the SPCC Plan for a particular facility.

B. Section 112.2—Definitions

Definitions for the following terms have been proposed to be revised, added or modified as follows:

- A definition of "discharge" has been revised to reflect changes to the definition in the 1978 amendments to the CWA. Discharges in compliance with a permit under section 402 of the CWA are not considered a discharge for the purposes of this part.
- A definition of "navigable waters" has been revised to conform with revisions to the regulation on the discharge of oil (40 CFR part 110).
- A definition of "offshore facility" has been revised to conform with the CWA and the March 8, 1990, revisions to the NCP. Offshore facilities are any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind that is subject to the jurisdiction of the United States and is located in, on, or under any other waters.
- A definition of "United States" has been revised to conform with revisions to the definition of the United States in the 1978 amendments to the CWA. The Commonwealth of the Northern Mariana Islands has been added to the definition.
- A definition of "contiguous zone" has been added to conform with the amendments to the CWA in 1978 and the March 8, 1990, revisions to the NCP.
- A definition of "wetlands" has been added to define the term as used in the definition of "navigable waters." The definition conforms with the definition in the oil discharge regulation (40 CFR part 110).
- Definitions for the terms "breakout tank" and "bulk storage tank" have been added to clarify the distinction between facilities regulated by DOT and EPA. EPA regulates facilities with bulk storage tanks. Breakout tanks are used to compensate for pressure surges or control and maintain pressure through pipelines. These tanks are frequently in-line and are regulated by DOT.
- A definition of "bunkered tank" has been added to clarify that bunkered tanks are a subset of "partially buried tanks." Bunkered tank means a tank constructed or placed in the ground by cutting the earth and recovering in a manner whereby the tank breaks the natural grade of the land. As such, bunkered tanks are subject to the provisions of 40 CFR part 112 as aboveground tanks.
- A definition of "facility" has been added based on the MOU between the Secretary of Transportation and the EPA Administrator dated November 24, 1971 (36 FR 24080). More detailed discussion of the types of facilities covered is in Appendix A.
- Definitions of "oil production facilities (onshore)" and "oil drilling, production, or workover facilities (offshore)" have been moved from existing § 112.7(e)(5)(i) and § 112.7(e)(7)(i), respectively.
- A definition of "partially buried tank" has been added to clarify the distinction between partially buried tanks and underground storage tanks, the latter being defined in this proposed rulemaking for SPCC purposes as those tanks completely covered with earth. Partially buried tanks are subject to the provisions of 40 CFR part 112 as aboveground tanks.
- A definition of "permanently closed" was added to clarify the scope of facilities and tanks excluded from coverage by this part. EPA solicits comments on the requirement to ensure that tank vapors remain below the lower explosive limit.
- A definition of "SPCC Plan" has been added to further explain its purpose and scope. The Plan provides a written explanation of a facility's compliance with the requirements of the regulation, including equipment, manpower, procedures, and steps to prevent, control, and provide adequate countermeasures to an oil spill.
- The definition of "spill event" was modified to correspond to the changes described in the applicability section of this rule relating to the expanded scope of CWA jurisdiction.
- A definition for "storage capacity" has been added to clarify that it includes the total capacity of a tank or container capable of storing oil or oil mixtures. Because the percentage of oil in a mixture is determined by the operator and can be changed at will, the total capacity of a tank or container is considered in determining applicability under this part, regardless of whether the tank or container is filled with oil or a mixture of oil and another substance, as long as the mixture would violate standards in 40 CFR part 110.
- A definition of "underground storage tank" has been added. The SPCC program defines the term more narrowly than the UST program under RCRA Subtitle I. Under the SPCC program, EPA proposes to regulate any tanks that are not completely buried as aboveground tanks, because tanks with exposed surfaces exhibit a potential to discharge into navigable waters and adjoining shorelines. See also the discussion in the preamble regarding the relationship between the SPCC and the UST programs.

EPA is not proposing any changes to the definition of "oil" (except its redesignation from § 112.2(a) to § 112.2(i)).

C. Section 112.3—Requirement to Prepare and Implement a Spill Prevention, Control, and Countermeasures Plan

This section describes the requirements for the preparation and implementation of SPCC Plans. Most of the proposed modifications to § 112.3 have been provided for clarification. However, in paragraph (b) of the current rule, a new facility is required to prepare a Plan within six months after operations begin and to implement the Plan within one year. In proposed paragraph (b), a new facility is required to prepare and fully implement a Plan before beginning operations, unless an extension has been granted by the Regional Administrator (proposed § 112.5(a) requires that Plans be amended before any change is made that materially affects the facility's potential for discharge of oil into the waters of the United States). Experience with the implementation of this regulation shows that many types of failures occur during or shortly following facility startup and that virtually all prevention, containment, and countermeasures practices are a part of the facility design or construction. Therefore, the Agency believes that new facilities should be required to plan and execute the provisions governing spill prevention prior to starting operations. EPA assumes for the purpose of this proposed provision that all existing facilities subject to this rule have had their SPCC Plans prepared since the regulation was issued, therefore, only new facilities would be affected by this proposed change in timing for the submittal of their Plans.

EPA also assumes in § 112.3(c) that owners/operators of existing onshore and offshore mobile or portable facilities have prepared and implemented a facility SPCC Plan as required by § 112.3(b); therefore, only new facilities are affected by the change in timing for the submission of the SPCC Plans.

Additional requirements concerning Plan certification by a Registered Professional Engineer are specified in § 112.3(d). The existing language states that "no SPCC Plan shall be effective to satisfy the requirements of this part unless it has been reviewed by a Registered Professional Engineer and certified to by such Professional Engineer. By means of this certification the engineer, having examined the facility and being familiar with the provisions of this part, shall attest that the SPCC Plan has been prepared in accordance with good engineering practices. Such certification shall in no way * * *."

This existing language states that the Professional Engineer (PE) must only be certified. The Agency is soliciting comments on the advantages and disadvantages associated with the PE being registered in the State in which the facility is located and the additional requirement that this PE should not be an employee of the facility or have any other direct financial interest in the facility

The U.S. General Accounting Office (GAO), in a 1989 report, "Inland Oil Spills: Stronger Regulation and Enforcement Needed to Avoid Future Incidents" (GAO/RCED–89–65), recommended that EPA evaluate the advantages and disadvantages of

requiring facilities to obtain certification from independent engineers.

The Agency notes that not having the PE otherwise associated with the facility may avoid any potential conflicts of interest or appearance of conflicts of interest that could arise from allowing an employee of a regulated party to certify a SPCC Plan. The Agency also notes that a requirement that a PE be licensed in the State in which the facility is located would allow the State licensing board to more easily address the actions of the PE under its jurisdiction, and that the PE may have greater familiarity with the State and local requirements related to the facility under review.

The Agency notes that disadvantages associated with the above approaches have been expressed by several organizations, who object to such requirements as challenging the integrity of professional engineers. They also point out that these requirements would impose substantial costs without enhancing the integrity of the certification process.

To assist the Agency in addressing the GAO and Task Force recommendations cited above, EPA specifically solicits comments or data regarding the ramifications of requiring that the certifying professional engineer not be an employee of the owner or operator.

In addition, under the proposed rule, the Engineer must attest that required testing has been completed and that the Plan meets the requirements of regulation for the facility. These revisions promote the Agency's intent in the original promulgation of § 112.3(d) that SPCC Plans be certified by a Registered Professional Engineer exercising independent judgment. The Agency intends these new requirements to be met when a new Plan is prepared after promulgation of this proposed rule, or an existing Plan is amended, pursuant to § 112.5. During inspections for compliance with the current SPCC requirements, some facility owners and operators have argued that they have not interpreted the current regulatory language to require that the certifying Engineer physically visit the facility EPA believes the current regulatory language (e.g., requiring the engineer to examine the facility) clearly requires the certifying Engineer to visit the facility prior to certifying the SPCC Plan. The proposed change clarifies this requirement by specifying that the Professional Engineer must be physically present to examine the facility.

As described in paragraph (e), the SPCC Plan must be available at a facility if the facility is normally attended eight hours per day. Some owners or operators at facilities operating one shift per day have interpreted this requirement as not applying to a facility that is in operation only seven and one half hours per day, deducting a half hour for lunch. The Agency strongly believes that to be most useful in preventing and mitigating discharges, the SPCC Plan must be an integral part of manned facility operations. Therefore, the Agency has chosen a four-hour minimum attendance requirement in the proposed rule to ensure that facilities operating one shift per day are required to maintain SPCC plans at the facility.

In paragraph (f), the owner or operator of new facilities described in paragraph (b) may in defined circumstances apply for an extension of time to comply with the requirements of this part. Existing facilities described in paragraphs (a) and (c) have had since 1973 to comply with the requirement and have their SPCC Plans in place, and therefore, this provision does not apply to those facilities.

D. Section 112.4—Amendment of SPCC Plans by Regional Administrator

This section describes the review of a Plan by the Regional Administrator in the event of certain types of spills and procedures for requiring an amendment to the Plan. In proposed paragraph (a)(4), owners or operators are required to provide the Regional Administrator with information on the name and address of any registered agent. In some instances, a registered agent of the owner or operator may have information needed by the Regional Administrator. The Regional Administrator may also need to contact the agent with further questions or transmit his review of the Plan back to the agent.

In proposed paragraph (a)(10), information on the nature and volume of oil spilled is required, in addition to the information currently required. Information on the nature and volume of oil spilled provides the Agency with additional information to identify select problem areas where additional regulatory emphasis may be needed. EPA also believes that this information will assist the Regional Administrator in determining if amendment of the SPCC Plan is necessary and in determining future oil pollution prevention policies.

In proposed paragraph (b), the references to § 112.3(a), (b), and (c) have been deleted because the times allowed in these paragraphs for the preparation and implementation of the Plan are proposed for deletion.

Paragraph (c) of the current rule requires that a complete copy of all information provided to the Regional Administrator be provided to the State agency in charge of water pollution control activities in which the facility is located. Proposed paragraph (c) would require that the information be sent to the State agency in charge of oil pollution control activities. The EPA is proposing this change because it is the appropriate agency to contact in many States.

In proposed § 112.4(d), a sentence has been added that discusses the review by the Regional Administrator of materials submitted under proposed § 112.7(d). Proposed § 112.7(d) requires, among other things, the owner or operator to submit to the Regional Administrator certain materials, such as a contingency plan, if the installation of structures or equipment listed in § 112.7(c) is not practicable.

E. Section 112.5—Amendment of SPCC Plans by Owners or Operators

EPA is proposing to revise § 112.5(a) to require that Plans be amended before any change is made in facility design, construction, operation, or maintenance affecting the facility's potential for discharge of oil into waters of the United States unless an extension has been granted by the Regional Administrator. This provision is consistent with the provision proposing that SPCC Plans for new facilities be prepared and implemented before facility operations begin. EPA is also proposing to clarify which changes require Plan amendments by listing the following types of changes as examples: (1) Commission or decommission of tanks; (2) replacement, reconstruction, or movement of tanks; (3) reconstruction, replacement, or installation of piping systems; (4) construction or demolition that might alter secondary containment structures; or (5) revision of standard operation or maintenance procedures at a facility. These examples are not an exclusive list of changes that require a Plan amendment.

The owner or operator of a facility subject to § 112.3(a), (b), or (c) is required by the current § 112.5(b) to review and evaluate the facility SPCC Plan at least every three years, and to amend the Plan within six months to include more effective prevention and control technology if: (1) Such technology will significantly reduce the likelihood of a spill from the facility; and (2) the technology has been field-proven at the time of the review.

The current § 112.5(c) states that, to be effective, all amendments to a facility's Plan must be certified by a

Professional Engineer in accordance with § 112.3(d). EPA is proposing an exception to this provision for any changes to the SPCC Plan emergency contact list (required by the proposed § 112.7(a)(3)(ix)). This change does not affect the technical/engineering aspects of the SPCC Plan, or the characteristics of the facility and, therefore, does not require certification by a Professional Engineer. It is important that the SPCC Plan emergency contact list be current in order to rapidly respond to spills.

F. Section 112.6—Civil Penalties for Violation of Oil Pollution Prevention Regulation

This section describes the penalties associated with failure to comply with certain listed sections of the rule. In this proposed rule, §§ 112.1(e), 112.7, 112.8, 112.9, 112.10, and 112.11 are added to the list of required provisions.

The OPA changes the penalty structure under the CWA (see Section I.C. of this preamble, Oil Pollution Act of 1990, for changes in liability limits and penalties). All violations of this regulation on or after August 18, 1990 are subject to the procedures set out in section 311 of the CWA as amended by the OPA. The Agency is reviewing the need for clarifying changes to § 112.6 and to 40 CFR part 114 in light of the OPA amendments.

G. Section 112.7—Spill Prevention, Control, and Countermeasures Plan General Requirements

The Agency is proposing to separate existing provisions of 40 CFR 112.7 into five sections (§§ 112.7, 112.8, 112.9, 112.10, and 112.11) based on facility type. Proposed § 112.7 provides general requirements for preparing SPCC Plans while §§ 112.8, 112.9, 112.10, and 112.11 address detailed Plan requirements for onshore facilities (excluding production facilities); onshore production facilities; onshore oil drilling and workover facilities; and offshore oil drilling, production, and workover facilities, respectively. The purpose of the reorganization of the current § 112.7 is for clarity and ease in using the regulation but is not intended to make substantive changes to the regulation; the new regulatory citations created by the reorganization do not by themselves require rewriting or recertification of SPCC Plans.

Section 112.3(a) of the current rule requires that SPCC Plans be prepared in accordance with § 112.7. The Agency believes, however, that clarification of the existing regulation is necessary because of confusion on the part of some owners or operators who have interpreted the current rule's use of the words "should" and "guidelines" as indications that compliance with applicable provisions of § 112.7 is optional. The current regulation requires that all SPCC Plans be prepared in accordance with good engineering practice. The Agency originally promulgated § 112.7 (now reorganized as proposed §§ 112.7, 112.8, 112.9, 112.10, and 112.11) to require that SPCC Plans be prepared in accordance with the appropriate provisions in that section in the belief that such practices are good engineering practice for facilities described in the regulation. However, the regulatory language "should" was used in most provisions to provide flexibility for facilities with unique circumstances that could show that such practices do not represent good engineering practice.

To eliminate any misunderstanding, the words "requirements" and "shall" have generally been substituted for the words "guidelines" and "should" in the proposed revisions to §§ 112.7, 112.8, 112.9, 112.10, and 112.11.

Nevertheless, because of the differences in facility design, the Agency continues to recognize that it is not always feasible or consistent with good engineering practice to mandate the same requirements for every facility to prevent and to contain oil spills. Thus, the Agency has reviewed each of the provisions of proposed §§ 112.7, 112.8, 112.9, 112.10, and 112.11 and, where appropriate, is proposing the provision as a recommendation for consideration by facility owners or operators in evaluating the requirements of good engineering practice.

Furthermore, as is the case in the current regulation, the proposed revision continues to provide for deviation from the requirements of § 112.7 where the owners or operators cannot meet the specific requirements set forth in the rule. A new proposed technical waiver in § 112.7(a)(2) allows for the owner or operator to provide equivalent alternate protection that is not specified in §§ 112.7(c), 112.8, 112.9, 112.10, and 112.11. EPA, in the exercise of its authority to inspect facilities and SPCC plans, of course, retains the authority to find that such alternative methods of protection do not provide equivalent protection.

In addition to clarifying language, the Agency has proposed in today's rule two other series of changes. First, the Agency has specified many of the inspection and monitoring time periods referred to in §§ 112.7, 112.8, 112.9, 112.10, and 112.11. In the current rule, many time periods are determined by the owner or operator and listed in the SPCC Plan, in accordance with good engineering practice. The Agency is proposing to define most of the time periods, while leaving only a few to interpretation by the owner or operator. By specifying time periods based on engineering practice, the Agency intends to provide the regulated community with greater certainty concerning its obligations. However, because of the diversity of facilities subject to this regulation, not all time periods can be standardized based on engineering practice.

Second, in various places in §§ 112.8 and 112.9 of the proposed rule, recommendations have been added to follow relevant industry standards or recommended practices, such as API series 12, 620, 650, and 2000; ASME B31.3, B96.1, and section VIII; NFPA 30, 31, and 31a; and UL 142. While the proposed rule does not specifically incorporate these standards, the Agency believes that adherence to appropriate industry standards is, in most cases, strong evidence of adherence to good engineering practice. The Agency recommends that these publications and others on recommended practices and procedures be consulted when developing a Plan.

The following discussion focuses on revised provisions, new requirements, and new recommendations in each paragraph in proposed § 112.7.

In § 112.7(a) of the current rule, facilities are required to include in the Plan information about spill events occurring prior to the effective date of the original Oil Pollution Prevention rule (1973). Because such information has little current relevance, the provision is proposed to be deleted. Proposed paragraph (a) includes a general description of the SPCC Plan, which is in the introductory text of § 112.7 of the current rule. Four new paragraphs have been proposed for addition to paragraph (a).

In proposed paragraph (a)(2), deviation from the requirements of paragraph (c) of this section and the requirements of §§ 112.8, 112.9, 112.10, and 112.11, which apply to a specific facility and which include specific provisions for structures and equipment, is allowed, as long as that equivalent protection is provided by other means. This provision is intended to provide much of the flexibility to incorporate differences in a diverse regulated community that was previously intended by the use of the regulatory language "should." Taken together with provisions clearly defined as requirements, this provision provides a clearer description of the Agency's

expectations for the purposes of Plan preparation.

Proposed paragraph (a)(3) clarifies the characteristics of a facility that must be described in the Plan, including unit-by-unit storage capacity, type and quantity of oil stored, estimates of quantity of oils potentially discharged, possible spill pathways, spill prevention measures, spill control measures, spill countermeasures, provisions for disposal of recovered materials, and a contact list with appropriate phone numbers. The description of the facility's physical plant must also include a facility diagram on which the location and contents of all tanks must be marked, regardless of whether the tanks are subject to all the provisions of 40 CFR part 280. A complete facility diagram will assist in response actions.

Proposed paragraph (a)(4) requires documentation in the Plan to enable a person reporting a spill to provide essential information (based on Agency experience) to organizations on the contact list. As the result of Agency experience during emergency conditions, proposed paragraph (a)(5) requires that portions of the Plan describing procedures to be used in emergency circumstances be organized in a manner to make them readily useable in an emergency.

Paragraph (b) of the proposed rule (§ 112.7(b) of the current rule) changes the "should" to "shall" for purposes of clarification. Section 112.7(c) of the current rule lists appropriate containment and diversionary structures and requires that dikes, berms, or retaining walls be sufficiently impervious to contain spilled oil. A proposed revision to this paragraph clarifies that the entire containment system, including walls and floor, must be impervious to oil for 72 hours. EPA believes that the specificity of a 72-hour standard provides the regulated community with greater clarification and flexibility than the phase "sufficiently impervious" currently in the regulation.

The Agency recognizes that spills occur while facilities are unattended; however, EPA believes that most facilities are attended at some time during a 72-hour period. Therefore, a containment system that is impervious to oil for 72 hours will allow time for discovery and removal of an oil spill in most cases. This requirement is consistent with the provision for diked areas surrounding bulk storage tanks in proposed § 112.8(c)(2). Another proposed revision to this paragraph clarifies and further defines the phrase "containment system that is impervious to oil" as being a system constructed so that spills will not permeate, drain or infiltrate or otherwise escape to surface waters before cleanup occurs.

The Agency is aware that for certain facilities, such as some electrical substations that have gravel beds surrounding equipment to prevent electrical and fire hazards, compliance with proposed § 112.7(c) may not be practicable. For these facilities, § 112.7(d) of the current rule describes the procedures for facilities where the installation of structures and equipment listed in paragraph (c) is not practicable. The Agency believes that the alternative requirements of § 112.7(d) provide the regulated community with additional flexibility on complying with the Oil Pollution Prevention regulation while fulfilling the intent of the CWA.

The proposed rule would add several new requirements. First, facilities would be required to conduct integrity testing of tanks every five years at a minimum. This is in contrast to the proposed requirement in § 112.8(c)(6) for integrity testing of tanks every ten years at facilities, that are able to incorporate secondary containment features. In addition, the proposed rule would require facilities without secondary containment to conduct integrity and leak testing of the valves and piping every year at a minimum. Annual testing has been proposed because valve and piping system failures are a major contributor to oil spills.[5]

The current § 112.7(d) requires that a strong oil spill contingency plan and a written commitment of manpower, equipment, and materials for spill control and removal be provided for facilities without secondary containment. Since these facilities do not have oil spill technology that uses secondary containment, prevention and countermeasures become of primary importance and these measures will have to be implemented immediately to prevent spills from reaching navigable waters. Proposed paragraph (d) clarifies that the contingency plan must be provided to the Regional Administrator. In addition, proposed paragraph (d) references proposed § 112.4(d), allows the Regional Administrator to approve the Plan or require amendment of the Plan.

The contingency plan is a subsection of an SPCC Plan. An SPCC Plan can be divided into two major concepts: (1) Design, operation, and maintenance procedures to prevent and control spills, and (2) how a facility's personnel are to respond to a discharge. The contingency plan is designed to deal with the second concept. It is proposed that the contingency plan shall be a separate section of the SPCC Plan because it would be more accessible during emergencies.

One of the first steps in developing a contingency plan is to define the potential hazard. Requirements to define a hazard are in § 112.7(b). Typically, to determine the potential hazard, the following would be examined: Potential failures, the size of a spill resulting from each type of failure, how fast and long the spill event would take to occur, and what the spill might impact. To determine what the spill may impact, the potential spill size, rate of flow, and direction of travel needs to be analyzed. The OPA requires facilities that pose a substantial threat or harm (e.g., facilities without secondary containment) to the navigable waters to prepare a facility specific response plan. This requirement will be addressed in Phase II revisions to the SPCC regulation.

Paragraph (d)(1) of the current rule states that an oil contingency plan must follow the provisions of 40 CFR part 109. The proposed paragraph no longer refers to 40 CFR part 109, but, specifies basic requirements for an oil contingency plan. The proposed revisions to this paragraph would require that the Plan include a description of response plans, personnel needs, methods of mechanical containment, removal of spilled oil, and access and availability of sorbents, booms, and other equipment. Proposed paragraph (d)(1) would require that the Plan not rely upon response methods other than containment and physical removal of oil from the water, unless such response methods have been approved for the contingency plan by the Regional Administrator. The additional approval for the actual use of dispersants and other chemicals to respond to oil spills in navigable waters would continue to be governed by 40 CFR part 300, subpart J of the National Contingency Plan.

Proposed paragraph (d)(2) contains a recommendation that the facility owner or operator consider factors such as financial capability in making the written commitment of manpower, equipment, and materials.

Section 112.7(e) of the existing regulation lists the provisions specific to various types of facilities. This section has been reorganized and divided into §§ 112.8, 112.9. 112.10, and 112.11. The remaining paragraphs in proposed in § 112.7 are discussed below.

Proposed Section 112.7(e): Inspection, tests and records. This is § 112.7(e)(8) in

[5] Twelve percent of all releases are caused by pipe leaks and valve failures. "Aboveground Storage Tank Incident Information Project," API, Washington, DC, December 20, 1988.

the current regulation. A facility should continually conduct self-inspections and regular maintenance on its equipment. In the proposed rule, all records of inspections and tests are to be maintained with the SPCC Plan because these records need to be readily accessible to EPA personnel and the certifying PE. The proposed rule changes from three to five years the period for which records of inspections and all test results (along with the written procedures for performing the inspections and tests) must be maintained with the SPCC Plan. The records of tests, inspections, and maintenance should be updated continuously. If these records were part of the Plan, as stated in the existing rule, the Plan would need to be amended each time old records were removed and new records added. The use of "maintained with" is intended to eliminate this problem.

The proposed rule change from three to five years for retention of records of inspections, test results, and written procedures for performance is consistent with the Federal statute of limitations on assessment of civil penalties for SPCC regulatory violations. Extending this requirement to five years will ensure that facility owners or operators have records needed to establish compliance with the Oil Pollution Prevention regulation. The provision requiring inclusion of all records of test results is a clarification of what inspections include.

Proposed § 112.7(f): Personnel, training, and spill prevention procedures. This section is § 112.7(e)(10) in the current regulation. Included in this section are requirements for training facility personnel. A new recommendation that training exercises be conducted yearly and that new employees be trained within their first week of work is proposed in § 112.7(f)(1). A high percentage of spills are caused by operator error, therefore, training and briefings are important for the safe and proper functioning of a facility. Training encourages up-to-date planning for the control and response to a spill. Training courses help sharpen operating and response skills, introduce the latest ideas and techniques, and promote contact with the emergency response organization and familiarity with the SPCC Plan. Refresher training must be carried out in a consistent and regular manner to ensure currency and capability of employees. New employees may have a higher probability for operation errors and, therefore, need training as soon as possible after their employment. Facility training in emergency response operations could be held in conjunction with local contingency planning efforts in accord with SARA Title III requirements.

Proposed § 112.7(g): Security (excluding oil production facilities). This section is § 112.7(e)(9) in the current regulation. Requirements for fencing, locks, lighting, and other security measures at facilities are described in this section.

Vandalism is a factor in many spills from facilities, therefore, there is a need for adequate and effective security to prevent access to the site by unauthorized persons and to prevent tampering with equipment and tanks. Paragraph (e)(9)(ii) of the current rule requires that master flow and drain valves be securely locked in the closed position when in non-operating or non-standby status. Because of changes in technology and the use of manual and electronic valving, the Agency believes that this provision should be clarified to require closure of valves; however, the method of securing valves is left to the discretion of the facility and good engineering practice, as described in proposed § 112.7(g)(2).

Paragraph (e)(9)(iv) of the current rule requires that the loading/unloading connections of oil pipelines be securely capped or blank-flanged when not in service or stand-by service for an extended time. Proposed paragraph (g)(4) clarifies "an extended time" to be a time greater than "six months." This time period is based on experience in the Regions. Regional personnel found that some spills were caused by loading or unloading oil through the wrong pipeline or turning the wrong valve when the pipeline in question was actually out-of-service. Since this rule applies to facilities and tanks operating seasonally and since a number of loading/unloading connections are used seasonally, a period of six months is proposed.

Proposed § 112.7(h): Facility tank car and tank truck loading/unloading rack (excluding offshore facilities). This section is § 112.7(e)(4) in the current regulation. Because many onshore facilities subject to the SPCC regulation have tank car and tank truck loading/unloading racks, this paragraph was kept in the general applicability section.

Proposed § 112.7(i). This section references conformance with the applicable provisions in proposed §§ 112.8, 112.9. 112.10, and 112.11 and if more stringent, with State rules, regulations, and guidelines.

H. Section 112.8: Spill Prevention, Control, and Countermeasures Plan Requirements for Onshore Facilities (Excluding Production Facilities)

This section combines §§ 112.7(e)(1), 112.7(e)(2), and 112.7(e)(3) of the current regulation. The word "plant" is changed to "facility" to clarify EPA's intent. Current § 112.7(e)(1) discusses facility drainage systems and is proposed to be renumbered as paragraph (b).

Proposed § 112.8(b)(3) clarifies that only undiked areas of a facility's property that are located such that they have a reasonable potential to be contaminated by an oil spill are required to drain into a pond, lagoon, or catchment basin. A good SPCC Plan should seek to separate reasonably foreseeable sources of contamination and non-contamination.

In proposed § 112.8(b)(4), "plant drainage" is changed to "facility drainage"; "ditches" is changed to "drainage" to clarify the meaning of the section. It is proposed that spilled oil shall be retained in the plant rather than returned to the plant. This change follows the spill prevention and control intent of this rule. Furthermore, it should be easier to retain spilled oil rather than retrieve oil that has been spilled and discharged from the facility. This should enhance efforts to prevent the discharge from reaching navigable waters.

Current § 112.7(e)(i)(v) is proposed as § 112.8(b)(5) and has been reworded to improve its clarity.

Proposed § 112.8(b)(6) includes a clarification that compliance with the SPCC regulation does not preclude the need for owners or operators to comply with the requirements of Federal, State and local agencies such as those for facilities in areas subject to flooding. The Plan should address these additional measures related to flooding. This is consistent with the FEMA promulgated requirements in 44 CFR part 60 for aboveground storage tanks located in flood hazard areas. For further discussion of FEMA's flood plain management requirements, see section IV.E. of this preamble.

Current § 112.7(e)(2) discusses bulk storage containers and is proposed to be renumbered as § 112.8(c). Proposed § 112.8(c)(1) contains a new recommendation that tanks conform with relevant industry standards as "good engineering practice". Paragraph (e)(2)(ii) of the current rule requires that tank installations include a secondary means of containment for the contents of the largest single tank and sufficient freeboard to allow for precipitation. Although the current rule and the

proposed revisions do not set a standard for "sufficient" freeboard, EPA recommends freeboard sufficient to contain a 25-year storm event. Certain facilities may have equipment such as electrical transformers that contain significant quantities of oil for operational purposes rather than storage purposes. EPA has determined for safety and other considerations that such oil filled equipment should not be subject to the provisions of proposed § 112.8(c) or § 112.9(d) addressing bulk storage containers at onshore facilities because the primary purpose of this equipment is not the storage of oil in bulk. Consequently, facilities with equipment containing oil for ancillary purposes do not need to provide secondary containment for this equipment nor implement the other provisions of proposed § 112.8(c) or § 112.9(d). Oil-filled equipment must meet other applicable SPCC requirements including the general requirements and the requirements of § 122.7, including § 112.7(c), to provide appropriate containment and or diversionary structures to prevent discharged oil from reaching a navigable water course. The general requirement for secondary containment, which can be provided by various means including drainage systems, spill diversion ponds, etc., will provide for safety and also meet the goals of section 311(j)(1)(c) of the CWA. The oil storage capacity of the equipment, however, must be included in determining the total storage capacity of the facility, which determines whether a facility is subject to the Oil Pollution Prevention regulation. The Agency believes that this interpretation will ensure that facilities containing oil storage capacity above the quantity cut-offs prepare SPCC Plans while, at the same time, recognizing that certain types of equipment use oil in specialized ways for which the provisions of proposed § 112.8(c) or § 112.9(d) are not necessary.

The SPCC Plan, however, will not require that specific oil spills prevention measures designed for storage tanks, such as dikes, be installed. EPA also solicits comments and data that might identify operational rather than storage uses of oil, other than electrical transformers, for facilities that may not currently use secondary containment as a common industry practice.

The current rule also requires that diked areas must be sufficiently impervious to contain spilled oil. The proposed § 112.8(c)(2) clarifies that these diked areas must be able to contain spilled oil for at least 72 hours (see previous discussion of § 112.7(c) in this preamble).

Current paragraph (e)(2)(iv) addresses underground metallic storage tanks and is proposed to be renumbered as § 112.8(c)(4). Because tanks currently subject to the technical requirements of the UST regulation (40 CFR part 280) would be generally exempted from SPCC requirements under proposed § 112.1(d)(4), proposed § 112.8(c)(4) would only apply to tanks not covered by the UST requirements.

Paragraph (e)(2)(iv) in the current rule requires buried tanks to be subjected to regular pressure testing. Under proposed § 112.8(c)(4), regular leak testing is recommended for such tanks. Leak testing is specified, rather than pressure testing, in order to be consistent with many State regulations. The Agency is not proposing to require leak testing under the Oil Pollution Prevention rule until further data are generated. The Agency is aware that this technology is evolving rapidly with new volumetric testing designs, acoustic detection methods, and tracer gas techniques in various stages of commercial development. EPA's Office of Underground Storage Tanks will be reviewing these new techniques and subsequently may issue technical requirements for tanks for which technical provisions under 40 CFR part 280 are currently deferred. These technical provisions may be incorporated into this regulation.

Under § 112.7(e)(2)(v) of the current rule, partially buried metallic tanks are to be avoided unless the shell is coated. Under proposed § 112.8(c)(5), it is recommended that partially buried or bunkered metallic tanks be avoided altogether. If such tanks are used, however, they must be protected from corrosion by coatings, cathodic protection, or other methods. This proposed provision is consistent with the requirements for completely buried tanks.

Paragraph (e)(2)(vi) of the current rule requires that aboveground tanks be subject to periodic integrity testing and lists suggested testing techniques. Proposed § 112.8(c)(6) specifies that the testing must be performed every ten years and when material repairs are conducted. An example of such testing is a full hydrostatic test performed when a tank is reconstructed or when the tank has undergone major repairs or major alterations. A major repair or alteration may include removing or replacing the annular plate ring, replacement of the tank bottom, or jacking of a tank shell. EPA believes that a ten-year testing interval is standard industry practice although many types of tanks, such as those storing types of crude oil, may require more frequent testing. In addition to hydrostatic testing, visual testing, and a system of non-destructive shell testing, as listed in the current rule, the Agency recommends such techniques as radiographic, ultrasonic, or acoustic emissions testing for testing the integrity of aboveground tanks. The Agency does not believe that visual tests alone are sufficient for an integrity test, and that they should be used in combination with the aforementioned techniques.

Studies of the Ashland oil spill suggest that the tank collapse resulted from a brittle fracture in the shell of the tank. Adequate fracture toughness of the base metal of existing tanks is an important consideration in spill prevention, especially in cold weather. Although no definitive non-destructive test exists for testing fracture toughness, the API 650 standard establishes material toughness criteria that reduce the risk of brittle fracture; therefore, the Agency recommends that this standard be used as a starting point.

Section 112.7(e)(2)(vii) of the current rule discusses the factors to be considered to control leakage from defective internal heating coils. Under paragraph (e)(2)(vii)(A) of the current rule, steam return or exhaust lines from internal heating coils that discharge into an open water course must be monitored or passed through a settling tank, skimmer, or other separation or retention system. In proposed § 112.8(c)(7)(i), the Agency recommends that these systems be designed to hold the entire contents of the affected tank, be of sufficient size to contain a spill that may occur when the system is not being monitored, or have fail-safe oil leakage detectors. The revision in proposed § 112.8(c)(7)(ii) clarifies that consideration of the feasibility of installing an external heating system is a discretionary provision.

Paragraph (e)(2)(viii) of the current rule lists several devices to ensure that new and old tank installations are fail-safe engineered; one or more of these devices is required at a facility. Testing frequency of these devices may vary depending on the type of sensor and the manufacturer. The Agency is not specifying a time frame for testing sensing devices, but recommends regular testing in accordance with manufacturer specifications and schedules. Proposed § 112.8(c)(8)(v) allows for the use of other newly developed sensing devices if these devices will provide equivalent protection consistent with § 112.7(a).

Paragraph (e)(2)(x) of the current rule requires that oil leaks from tank seams, gaskets, rivets, and bolts sufficiently large to cause accumulation of oil in diked areas be promptly corrected. Proposed § 112.8(c)(10) adds a requirement that the accumulated oil or oil-contaminated materials must be removed within 72 hours from the time the spill event occurs. This time frame is consistent with the requirement for diked areas as specified in proposed § 112.7(c).

Paragraph (e)(2)(xi) of the current rule discusses the requirements for mobile or portable oil storage tanks. In proposed § 112.8(c)(11), it is recommended that these systems have a secondary means of containment for the largest container. Since many mobile and portable tanks are sited for a short duration at construction sites and moved frequently from location to location, EPA recognizes that it will not always be feasible to have secondary containment. If it is not technically feasible, the SPCC plan should include a complete discussion of why it is not feasible, and state the countermeasures to be used in case of a spill.

Section 112.7(e)(3) of the current regulation discusses facility transfer operations, pumping, and in-plant process and is proposed to be renumbered § 112.8(d). The current § 112.7(e)(3)(i) requires that buried piping installations have a protective coating and be cathodically protected if soil conditions warrant. Proposed § 112.8(d)(1) requires protective coating and cathodic protection for new or replaced buried piping, regardless of soil conditions. Based on EPA experience, the Agency believes that all soil conditions warrant protection of buried piping. However, the Agency is not requiring currently in-place buried piping to have a protective wrapping and be cathodically protected. The owner or operator of a facility in the past may have determined that soil conditions do not warrant these protection methods. Further, the Agency also believes that the activities associated with replacing all unprotected buried piping would possibly cause more spills than it would prevent. The proposed paragraph would allow facilities the option of complying with other corrosion protection standards for piping specified in 40 CFR part 280.

In proposed § 112.8(d)(1), it is recommended that piping installations shall be placed aboveground whenever possible. The Agency encourages the placement of these installations in leak-proof galleys that feed to the facility's oil/water separator. Paragraph (e)(3)(ii) of the current rule requires that the terminal connection of oil pipelines be securely capped or blank-flanged when not in service or in stand-by service for an extended time. Proposed paragraph (d)(2) clarifies "an extended time" to be "six months or more."

Proposed § 112.8(d)(4) clarifies that all aboveground valves, piping, and appurtenances must be subjected to monthly examinations. In the current rule, this provision requires "regular" examinations of "aboveground valves and pipelines" only. It has been the Agency's experience that other appurtenances may be a major cause of oil spills and should be regularly examined. The current rule also suggests that periodic pressure testing may be warranted for piping in certain areas. The proposed rule recommends that facilities conduct annual integrity and leak testing of buried piping or monitor buried piping monthly following the monitoring requirements of 40 CFR part 280. In addition, records of this testing or monitoring are to be maintained for a period of at least five years (see section III.G., and § 112.7(e)). The Agency recommends that all valves, pipes, and appurtenances conform to relevant industry codes, such as ASME Standards.

Proposed § 112.8(d)(5) adds a recommendation that facilities post vehicle weight restriction to prevent damage to underground piping.

I. Section 112.9: Spill Prevention, Control, and Countermeasures Plan Requirements for Onshore Oil Production Facilities

This section is § 112.7(e)(5) in the current regulation. Paragraph (e)(5)(ii)(B) of the current rule requires that accumulations of oil from ditches, oil traps, sumps, or skimmers be removed. Proposed § 112.9(c)(2) clarifies that oil-contaminated soil, as well as accumulation of oil, must be removed. EPA encourages facilities to remove such accumulations immediately, or within the 72 hour required period if immediate removal is not feasible. EPA recognizes that many production facilities are not staffed during a given 72 hours, and therefore cleanup and discovery times may lag. EPA solicits comments on the appropriate amount of time for discovery and removal of spilled oil at production facilities. Proposed § 112.9(c)(3) is a new recommendation, for oil production facilities in areas subject to flooding, that the Plan address additional precautionary measures related to flooding. FEMA's requirements for aboveground storage tanks located in flood hazard areas are discussed in Section IV. E. of this preamble.

Proposed § 112.9(d)(1) contains a recommendation that tanks conform with relevant industry standards, similar to the recommendation in proposed § 112.8(c). Paragraph (e)(5)(iii)(B) in the current rule requires secondary containment for the contents of the largest single tank, if feasible; the proposed revision in § 112.9(d)(2) clarifies that the containment must include sufficient freeboard to allow for precipitation. Agency experience has determined that freeboard for precipitation at production facilities to be very important because these facilities are frequently left unattended and water is more likely to accumulate in diked areas. Paragraph (e)(5)(iii)(C) of the current rule requires that production tanks must be visually examined on a scheduled periodic basis. Proposed § 112.9(d)(3) clarifies that the examination must occur at least once a year. It is also proposed that facility owners and operators be required to maintain the schedule and records for examinations of tanks for a period of five complete years, irrespective of changes in ownership (see Section III.G., and § 112.7(e)).

Paragraph (e)(5)(iv)(A) of the current rule requires that aboveground valves and piping be examined periodically on a scheduled basis. Proposed § 112.9(e)(1) clarifies that the examination must occur monthly, that the schedule of examinations must be included in the SPCC Plan, and that records must be maintained for five years (see Section III.G., and § 112.7(e)). EPA has found that failures in a facility's internal piping system are a major cause of oil spills. The Agency believes that monthly examinations will prove effective in the discovery and remediation of potential problems. Paragraph (e)(5)(iv)(B) of the current rule requires oil field brine disposal facilities to be examined often. EPA is not proposing a change to this requirement because the circumstances of location and staffing schedules vary greatly for such facilities. EPA, however, suggests that weekly examination will be an appropriate engineering standard for most facilities. Low temperature conditions, sudden temperature changes, or periods of low flow rates may require more frequent inspections.

Paragraph (e)(5)(iv)(C) of the current rule requires production facilities to have a program of flowline maintenance at the facility's transfer operations. EPA is proposing to change this requirement to a recommendation because the circumstances of locations, staffing, and design vary greatly for production

facilities. EPA suggests that monthly examinations are appropriate for most facilities.

J. Section 112.10: Spill Prevention, Control, and Countermeasures Plan Requirements for Onshore Oil Drilling and Workover Facilities

This section is § 112.7(e)(6) in the current rule and includes requirements for onshore oil drilling and workover facilities. Paragraph (e)(6)(i) of the current rule requires that mobile drilling or workover equipment be located so as to prevent spilled oil from reaching navigable waters.

Proposed § 112.10(d) requires that "when necessary," a blowout prevention assembly and well control system be installed that is capable of controlling any anticipated wellhead pressure that is expected to be encountered while that blowout assembly is on the well. EPA recognizes that a blowout prevention assembly is not necessary where pressures are not great enough to cause a blowout (gauge negative) and need not be required in all cases. However, a gauge negative reading must be evaluated in conjunction with an examination of the known history of the pressures encountered when drilling on the oil reservoir. The history of the reservoir may indicate that a blowout prevention assembly and well control system is needed. Where the history of the reservoir is not known, then a blowout prevention assembly and well control system must be installed.

K. Section 112.11: Spill Prevention, Control, and Countermeasures Plan Requirements for Offshore Oil Drilling, Production, or Workover Facilities

This section is § 112.7(e)(7) in the current regulation and includes the requirements for offshore oil drilling, production, and workover facilities. The definition of these facilities has been moved to § 112.2 (j). Numerous other editorial changes have been made to clarify the intent of this section.

As indicated in § 112.11(b) of this proposed regulation, offshore oil drilling, production, and workover facilities that are subject to the Operating Orders, notices, and regulations of the MMS are not subject to this part. Paragraph (e)(7)(ii) of the current rule requires removal of oil in collection equipment as often as necessary to prevent overflow. The proposed § 112.11(c) has been amended to require removal of collected oil at least once a year. EPA believes that yearly oil removal will prevent buildup of accumulated oils. A protracted removal period could lead to an accidental excess buildup and resultant overflow.

Paragraph (e)(7)(iii) of the current rule requires a regularly scheduled maintenance program for the liquid removal and pump start-up device. Because offshore facilities have less ability to control spills in navigable waters than onshore facilities, their containment devices are particularly important. In the proposed § 112.11(d), "regularly scheduled" is clarified as "monthly."

With regard to corrosion protection in proposed § 112.11(h), the Agency recommends that the appropriate NACE standards be followed in determining suitable corrosion protection for tanks. Proposed § 112.11(j) cites simulated spill testing as a preferred method to test and inspect oil spill prevention equipment and systems. Experience has demonstrated that properly maintained and functioning pollution prevention equipment is the most cost-effective way to control oil spills. These systems are crucial at offshore oil drilling, production, and workover facilities where a reduced ability to prevent oil from reaching navigable waters exists. Therefore, proposed § 112.11(j) has also been revised to require scheduled periodic testing and inspection of pollution prevention equipment not less than monthly.

Paragraph (e)(7)(x) of the current rule requires the owner or operator to describe well shut-in valves and devices and to keep detailed records for each well. Proposed § 112.11(k) clarifies that this documentation must be maintained at the facility for a period of no less that five years (see Section III.G. and § 112.7(e)).

Paragraph (e)(7)(xii) of the current rule describes extraordinary well control measures for emergency conditions. In proposed § 112.11(m), such measures are restated as recommendations. Further measures will be examined in the context of spill contingency planning. Contingency planning will be a major topic of the Phase Two rulemaking and the provisions in this proposed paragraph will be reviewed at that time.

The order of sections in the current § 112.7(e)(7)(xiii) has been changed for clarity. Section 112.7(e)(7)(xiii) of the current rule is proposed to be renumbered as § 112.11(s), and paragraphs (e)(7)(xiv) through (e)(7)(xviii) of the current rule are proposed to be renumbered as § 112.11 (n) through (r), accordingly.

IV. Relationship to Other Programs

A. Underground Storage Tanks

A number of underground and aboveground petroleum storage tanks (as defined by the proposed revisions to 40 CFR part 112) are subject to both the Oil Pollution Prevention regulation and the UST regulation (40 CFR part 280) issued under subtitle I of the Resource Conservation and Recovery Act (RCRA).

A goal of both the SPCC and UST programs is to prevent releases of petroleum, although there are differences in applicability, approach, and the regulated community. For example, the current Oil Pollution Prevention regulation is applicable to the owners or operators of facilities: (1) Possessing either underground storage capacity greater than 42,000 gallons of petroleum (or any other oil), or total aboveground storage capacity greater than 1,320 gallons of oil (or greater than 660 gallons of oil in a single aboveground tank); and (2) that, because of their location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States or adjoining shorelines. The UST regulations apply to owners or operators of underground petroleum tank systems (as defined in 40 CFR part 280) that have a volume at least ten percent beneath the surface of the ground. (The UST program also regulates underground storage tanks containing hazardous substances as defined by the Comprehensive Environmental Response, Compensation, and Liability Act. as amended (CERCLA)).

In addition, the SPCC program is designed to protect surface waters, whereas the UST program under RCRA subtitle I is intended, in part, to provide protection for ground water. Finally, the regulatory focus of the SPCC and UST programs currently differs significantly as they relate to underground storage tanks. The SPCC program regulates facilities with relatively large underground storage capacity, whereas the bulk of the currently regulated universe under the UST technical standards (40 CFR part 280) is small-capacity USTs at facilities such as gasoline filling stations. Because EPA believes that the UST program offers equivalent protection, EPA is proposing to exclude from SPCC coverage (with two limited exceptions described below) underground storage tanks that are covered by all of the UST program provisions in 40 CFR part 280.

It is important to note that application of the technical standards under the UST regulation has been deferred for several types of UST systems, including systems with field-constructed tanks (40 CFR 280.10(c)(5)). Therefore, such systems are not "subject to all of the UST provisions" and, thus, are subject to SPCC requirements under this

proposal. Further, this exclusion from SPCC coverage for underground storage tanks subject to all UST program provisions is limited to USTs meeting the proposed SPCC regulation definition of an underground storage tank, i.e., a tank completely covered with earth. The definition used in the UST program, 40 CFR part 280, is broader and includes partially buried tanks. The SPCC program proposes to regulate any tanks that are not completely buried because tanks with exposed surfaces exhibit a greater potential to discharge into navigable waters of the United States and other surface waters. Thus, a facility may have some tanks that are exempt from SPCC requirements and some tanks that are not exempt.

The applicability of 40 CFR part 112 is limited to facilities with underground or aboveground capacity as previously outlined (i.e., facilities possessing underground oil storage capacity greater than 42,000 gallons, total aboveground oil storage capacity greater than 1,320 gallons, or oil storage capacity greater than 660 gallons in a single aboveground tank). As a result of the proposed exclusion from SPCC program coverage for tanks currently subject to all UST program provisions in 40 CFR part 280, the calculation of a facility's underground storage capacity should not include those tanks.

Finally, there is a qualification in this proposed rule that affects the general exclusion for USTs currently regulated under 40 CFR part 280. Although an UST may be exempt from the SPCC requirements, if the facility has non-exempt tanks for which it must prepare a facility SPCC Plan, the location and contents of the exempt tanks must be marked on the facility diagram. All tanks must be marked on the facility diagram so that response personnel are able to easily identify dangers from either fire or explosion, or physical impediments during spill response activities. In addition, facility diagrams may be referred to in the event of design modifications.

B. State Programs

State and local governments are encouraged to supplement the Federal SPCC program using their own authorities. An increasing number of States have established or are considering State-authorized oil pollution prevention programs. Some of the State programs have imposed requirements more stringent than the Federal requirements or have added new requirements, such as tank licensing, tank standards, and location specifications. In addition, many States are currently assessing the adequacy of related programs or are considering legislation on aboveground oil storage tanks. Compliance with the SPCC program requirement does not alleviate the responsibility of owners and operators of affected facilities to comply with these various State requirements.

C. Superfund Amendments and Reauthorization Act of 1986 (SARA) Title III Integration With Local Emergency Planning

Section 311 of the CWA does not authorize EPA to delegate elements of the SPCC program to the States. The Agency does recognize, however, that local officials, such as fire marshals, frequently inspect the installation of aboveground storage tanks to enforce local codes and are often the first on-scene responders to oil spills. Therefore, to ensure better local involvement and awareness of a potentially harmful spill, the Agency is proposing to require that the facility SPCC Plan include telephone numbers to contact various local authorities. The Agency believes that this contact list will aid in emergency planning and response in the event of an oil spill.

Beyond this, coordination between Federal/State/local agencies is possible through additional authorities—in particular, sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA) or SARA Title III (42 U.S.C. 11021, 11022). These provisions require facilities that are directed to prepare or have available material safety data sheets (MSDSs) under regulations of the Occupational Safety and Health Administration (OSHA), to submit MSDSs and annual inventory data for "hazardous chemicals" to State Emergency Response Committees (SERCs). Local Emergency Planning Committees (LEPCs), and fire departments, if the amount present on site at any time exceeds specified threshold levels. Petroleum products fall within the definition of "hazardous chemicals" under SARA Title III. This reporting requirement affects all types of facilities.

Beyond State-authorized oil pollution prevention programs, the community right-to-know requirements of sections 311 and 312 of SARA Title III can be an effective component of State and local involvement in spill prevention and control activities. Specifically, by receiving MSDSs for all petroleum and other hazardous chemical facilities, the LEPC, using hazard analysis techniques, can establish priorities for addressing hazards in the community. Instead of addressing a regulated population of over 400,000 facilities, as the Federal government does in the SPCC program, each LEPC can identify and focus on a smaller population of priority local facilities in evaluating preparedness and available response resources and preparing a local emergency response plan, thus supplementing and complementing the Federal SPCC program, and later, local area committee plans. The LEPC, industries, and other interest groups can develop a constructive dialogue that assists in developing prevention techniques and identifying procedures for responding to releases. EPA expects to work closely with States to develop mechanisms for sharing information about facilities and oil spills to improve the protection of navigable waters from discharges of oil, and human health and the environment.

In addition to coordination among Federal, State, and local regulatory entities under SARA Title III, facility owners or operators should ensure that their contingency plans, developed under the SPCC regulations, are compatible and coordinated with local emergency plans, including those developed under SARA Title III. As discussed in Section II of this preamble, although the proposed revisions to the SPCC regulation do not amend materially the contingency planning requirements contained in the existing regulation, EPA will address this issue in depth in the Phase Two modifications to the regulation. To implement the provisions of the OPA, EPA will propose to require certain facilities to prepare and submit a plan for responding, to the maximum extent practicable, to the largest foreseeable discharge in adverse weather conditions. Under the current regulation, facilities are required to implement a contingency plan when it is impracticable to implement certain oil spill prevention practices.

D. Wellhead Protection

Compliance with the requirements of section 311 of the CWA and their facility's SPCC Plan does not alleviate the need for facility owners or operators to be in compliance with State Wellhead Protection (WHP) programs required by section 1428 of the Safe Drinking Water Act (SDWA). Many public water supply wells are located in permeable formations bordering streams or surface waters, which at times recharge these surface waters. These wells may be vulnerable to contamination if an oil spill should occur and, therefore, may require added protection. WHP programs are designed to protect public water supply wells located in these type of settings.

Section 1428 of the SDWA requires that each State adopt and submit to

EPA, a WHP program that, at a minimum:

- Specifies the duties of State agencies, local government entities, and public water supply systems with respect to the development and implementation of programs;
- For each wellhead, determines the wellhead protection area (WHPA), as defined in section 1428(e), based on all reasonably available hydrogeologic information;
- Identifies within each WHPA all potential anthropogenic sources of contaminants that may have adverse effects on human health;
- Describes a program that contains, as appropriate, technical and financial assistance, implementation of control measures, education, training, and demonstration projects to protect the water supply within WHPAs from contaminants;
- Includes contingency plans for the provision of alternative drinking water supplies in the event of contamination;
- Includes a requirement to consider all potential sources of such contaminants within the expected wellhead area of a new water well, which serves a public water supply system; and
- Includes a requirement for public participation in the development of the WHP program.

At this time, EPA has received WHP submittals for review from 30 States. This proposed rule indicates that owners and operators must comply with both the State WHP program and the SPCC regulations. Meeting the requirements of the SPCC program does not necessarily ensure compliance with a State WHP program.

E. Flood-Related Requirements

In § 112.8(b)(6) and § 112.9(c)(3) of the proposed rule, it is recommended, in accordance with Executive Order 11988, Floodplain Management, that the SPCC Plan address precautionary measures for facilities in locations subject to flooding. The National Flood Insurance Program (NFIP) definition of structures includes aboveground oil storage tanks. At a minimum, acceptable mitigation measures are specified in Executive Order 11988 and reference the NFIP's flood loss reduction standards; those standards should be addressed in the SPCC Plan for aboveground storage tanks located in a flood hazard area. Standards for newly constructed or substantially improved aboveground storage tanks are contained in 44 CFR 60.3.

NFIP requires, among other things, that tanks be designed so that the lowest floor is elevated to or above the base flood level or be designed so that the structure below the base level is watertight with walls substantially impermeable to the passage of water, with structural components having the capability of resisting hydrostatic and hydrodynamic loads, and with the capability to resist effects of buoyancy. For structures that are intended to be made watertight below the base flood level, a Registered Professional Engineer must develop and/or review the structural design, specifications, and plans for construction, and certify that they have been prepared in accordance with accepted standards of practice.

Additionally, the NFIP has specific standards for coastal high hazard areas. Existing tanks located in coastal high hazard areas will be subject to high velocity waters, wave action, and the accompanying potential for severe erosion and scour. Retrofitting measures for tanks should be tailored to the unique hazards of the coast and may include flood protection works, floodproofing, and other modifications to facilities that will reduce the damage potential. In complying with the requirements of the SPCC regulation while developing a SPCC Plan, owners or operators are encouraged to consider and comply with the requirements in 44 CFR 60.3.

F. Occupational Safety and Health Administration

A number of aboveground storage tanks are subject to OSHA requirements under 29 CFR 1910.106. OSHA regulates occupational settings where flammable and combustible liquids are present. Requirements for tanks and ancillary equipment, secondary containment, inspections and testing, and contingency planning are set forth in the OSHA regulations.

OSHA requires tanks to be spaced three to 20 feet apart, and proper venting and fire resistant supports to be installed. API 620 and 2000, the ASME Boiler and Pressure Code, ANSI 31, and UL standards are incorporated into OSHA guidelines. Dikes must be able to contain 100 percent of each tank's capacity, the dike walls must average six feet in height, and earthen dikes must be more than three feet in height and two feet in width at the top. OSHA requires only a one-time test (including hydrostatic testing) for strength and tightness; however, compliance with ASME, API, or UL standards must be marked on all tanks prior to use.

OSHA requirements outlined in 29 CFR 1910.106 are important to good spill prevention programs and should be incorporated into SPCC Plans whenever doing so represents good engineering practice.

V. Request For Comments

As discussed in section II of this preamble, the Agency is soliciting comments and data on the proposed notification requirements, spill contingency planning needs, the discretionary nature of certain provisions, and the possibility of making certain provisions requirements only for large facilities. Also in Section II of the preamble, EPA requests comments on other practices that are not proposed at this time, including: (1) That owners or operators attach a signed and dated statement to the SPCC Plan upon completion of Plan review; and (2) that owners or operators of onshore facilities other than production facilities describe the design capabilities of their drainage systems in the SPCC Plan. Section III of the preamble contains a request for comments on the advantages and disadvantages associated with the professional engineer being registered in the State in which the facility is located and the additional requirement that the professional engineer not be an employee of the facility or have any direct financial ties to the facility. EPA also solicits comments and data on criteria for defining "permanently closed" tanks.

In addition to the specific requests described above, EPA solicits comments and information on several other issues. One particular issue involves facilities with equipment, such as electrical transformers, that contain significant quantities of oil used for operational purposes. As described in section III.H, the Agency has determined that such equipment is not subject to the provisions addressing bulk storage containers. EPA solicits comments on whether there are examples of other facilities with similar equipment containing oil for ancillary purposes that should not be subject to the proposed bulk storage provisions. Also, EPA solicits comments from owners or operators of facilities with SPCC plans currently in place as to whether they believe existing plans would be adequate to meet the requirements of the regulation, as proposed. In particular the Agency would like comments on this issue from owners and operators of farms, electrical facilities, and facilities storing food oils. Including information as to the extent to which the proposed requirements may impose new compliance costs.

VI. Regulatory Analyses

A. Economic Analyses

EPA has prepared two preliminary economic analyses to support today's proposed rule; an initial economic impact analysis and a supplemental cost/benefit analysis. Both analyses estimate the societal benefits resulting from fewer oil spills, and the economic effects on the SPCC-regulated community on the following proposed revisions: (1) The proposed one-time notification form: (2) The proposed regulatory language modifications; and (3) two new proposed discretionary practices. However, these two analyses differ primarily in assumptions regarding how the regulated community would interpret certain proposed revisions, and, therefore, how the behavior of SPCC-regulated facilities would change.

The initial economic impact analysis developed cost estimates only for the proposed notification form. No costs or benefits were estimated for the proposed changes in regulatory language and the two new proposed discretionary practices because these were assumed not to alter significantly the behavior of the SPCC-regulated community. Based on the findings of the initial economic impact analysis, the proposed rule would be expected to be non-major because the economic effects would result in estimated costs of approximately $9.9 million during the first year the rule is in effect and approximately $200,000 in each subsequent year. The present value of the cost, discounting at 10-percent over a 10-year period, is about $10 million.

EPA performed an additional analysis to estimate the economic effects of the proposed rule based on alternative expectations about how the regulated community would interpret certain proposed revisions. Specifically, a supplemental cost/benefit analysis was performed to estimate the economic effects of: (1) Certain proposed revisions (described in Section III of the preamble) to the regulatory language based on the assumption that a substantial proportion of the regulated community would need to change their behavior to comply with these provisions; and (2) two new proposed discretionary provisions (described in Section II.C of the preamble) based on the assumption that a substantial proportion of the regulated community would need to change their behavior as a result of these new requirements. The estimated cost and benefits of the proposed notification form as calculated in the initial analysis also were presented. Based on this supplemental analysis, the proposed rule would be a major rule as defined by Executive Order No. 12291, because the annualized estimated cost (based on a 10-year time horizon and a 10-percent discount rate) is about $145 million. Both the "Economic Impact Analysis of the Proposed Revisions to the Oil Pollution Prevention Regulation" and the "Supplemental Cost/Benefit Analysis of the Proposed Revisions to the Oil Pollution Prevention Regulation" are available for inspection as part of the administrative record for this proposed regulation (Docket Number SPCC–1P). This record is available to the public in room M2427 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The estimated cost and benefits of the three groups of proposed revisions are summarized below.

The present and annualized value of the cost and benefit estimates of the proposed notification form, based on a 10-year time horizon and a 10-percent discount rate, are presented in Table 1.

TABLE 1.—PROPOSED NOTIFICATION PROVISION

	Benefits [1]	Costs	Net benefits
Present Value	$26 million	$10 million	$16 million.
Annualized	$4.2 million	$1.6 million	$2.6 million.

[1] The monetized benefits as a result of the proposed notification form were estimated in the supplemental cost/benefit analysis. The methodology used to estimate these benefits is included in appendix 2–A and 2–B of the Supplemental Cost/Benefit Analysis of the Proposed Revisions to the Oil Pollution Prevention Regulation. EPA invites comment on both the methodology used and the results obtained, especially information which might indicate that substantial benefits or costs have been included.

Tables 2 and 3 show the present and annualized value of the cost and benefit estimates of the proposed regulatory language changes and the two new proposed discretionary provisions. These estimates were developed in the supplemental cost/benefit analysis, based on assumptions about how the behavior of the regulated community would change as a result of interpreting these proposed revisions as substantive changes in required conduct.

TABLE 2.—PROPOSED CHANGES IN REGULATORY LANGUAGE

	Benefits	Costs	Net benefits
Present Value	$1,000 million	$441 million	$559 million.
Annualized	$162.8 million	$71.8 million	$91.0 million.

The cost estimates for the proposed changes in regulatory language presented above are based on a detailed analysis of six of approximately 60 changes in regulatory language ("should" to "shall" changes). These major provisions are expected to generate the largest total costs and, therefore, are expected to capture virtually all compliance cost for all SPCC-regulated facilities to comply with all the "should" to "shall" regulatory changes. The methodology used to estimate these costs is included in appendix 1–C of the Supplemental Cost/Benefit Analysis of the Proposed Revisions to the Oil Pollution Prevention Regulation. EPA invites comment on both the methodology used and the results obtained, especially information which might indicate that substantial benefits or costs have been included.

TABLE 3.—PROPOSED DISCRETIONARY PROVISIONS [1]

	Benefits	Costs	Net benefits
Upper Bound:			
Present value	$495 million	$441 million	$54 million.
Annualized	$80.5 million	$71.8 million	$8.7 million.
Lower Bound:			
Present Value	$248 million	$441 million	$−193 million.
Annualized	$40.4 million	$71.8 million	$−31.4 million.

[1] While upper and lower bound monetary benefit estimates were developed in the supplemental cost/benefit analysis, upper and lower bound cost estimates for these two new proposed discretionary provisions were not developed in the initial economic analysis.

In addition, EPA is soliciting comments on two other practices that are not included in today's proposed revisions but are described in section II.C of this preamble. Specifically, these two provisions are: (1) A statement by the facility owner or operator that the SPCC Plan review has occurred; and (2) a statement to be included in the SPCC Plan that addresses the design capabilities of a facility's drainage system to control oil spills or leaks. By recommending that facility owners or operators state that a triennial review has been performed, EPA would expect to increase the degree to which upper management takes an active role to ensure that the Oil Pollution Prevention regulation is fully implemented at the facility. Increased managerial oversight may improve the overall quality and effectiveness of SPCC Plans, thereby reducing the number and severity of oil spills from SPCC-regulated facilities. Similarly, by including in the Plan a written statement indicating the adequacy of the facility's drainage system in handling leaking oil, those facility personnel responsible for drafting this statement could be encouraged to take a more active role to ensure that these existing systems are adequately designed to control oil leaks. While cost estimates were developed for these two practices, monetized benefit estimates were not developed because these two provisions involve paperwork activities and no data or case studies are available to adequately analyze the degree to which their implementation will lead to avoided oil spills. EPA requests data and analysis indicating the extent to which these recommendations would further improve the effectiveness of the Oil Pollution Prevention regulation, as well as data and analysis concerning appropriate analytical methods to estimate these benefits and costs, especially information indicating how the Agency could improve its analytical methods prior to promulgation of the final rule. The present value of the cost of these two provisions is estimated at $128 million.

In summary, the present value of the cost of the proposed rule based on the results of the supplemental cost/benefit analysis for the proposed notification form, the proposed changes in regulatory language, and the two new proposed discretionary provisions is estimated at about $892 million, while the present value of the monetized benefits range from $1.3 billion to $1.5 billion. Based on these preliminary analyses, the present value of the monetized benefit estimate exceeds the cost by about $382 to $539 million. In addition, quantified estimates of the benefits associated with the proposed revisions analyzed include only two benefits associated with reducing the number of oil spills: avoided cleanup costs and the value of the lost product (i.e., the value of the product in commerce prior to being lost in a spill). In addition, society is expected to gain other benefits in the form of avoided losses to commercial and recreational fishing and other resource damages, avoided lost recreational opportunities including beach use, boating, and waterfowl hunting, avoided damage to private property, and avoided public health risks, among others. EPA invites comments on the methodology used to estimate these benefits and costs, especially information indicating how the Agency could improve its analytical method prior to promulgation of the final rule.

B. Executive Order No. 12291

Executive Order (E.O.) No. 12291 requires that regulations be classified as major or non-major for purposes of review by the Office of Management and Budget (OMB). According to E.O. No. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Based on the assumption that regulated parties interpret both the proposed changes in regulatory language and the two new proposed recommendations as requiring substantive changes in conduct, the results of economic analyses performed by the Agency indicate that the proposed rule is expected to be major rule because the annual estimated costs would exceed $100 million. Specifically, the upper bound annualized value of the cost of the proposed rule is estimated to be $145 million and the annualized value of the benefit estimate is expected to range from $207 million to $248 million. This proposed rule has been submitted to OMB for review as required by E.O. No. 12291.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities." To determine whether a Regulatory Flexibility Analysis was necessary for this proposed rule, a preliminary analysis was conducted. The results of Regulations, Chapter 6, January 1991, available for inspection in Room M2427 at the U.S Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460). Therefore, because this proposed rule is not expected to have a significant impact on small entities, EPA certifies that no Regulatory Flexibility Analysis is necessary.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to OMB as required by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. A draft Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1548.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch (PM–223Y),

U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 or by calling 1–202–260–2740.

Public reporting burden for the proposed notification form affecting all SPCC-regulated facilities is estimated to range from one half hour to 1.5 hours per response, and the reporting burden for the recommended recordkeeping provision affecting medium and large SPCC-regulated facilities is estimated to range from 5 hours to 10 hours annually. Overall, the public reporting burden for both proposed provisions is estimated to range from one half an hour to 11.5 hours with an average reporting burden of approximately 1.9 hours per response. These reporting burden estimates include the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, storing the data, estimating the information required, and completing and reviewing the collection on information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (PM–223), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 112

Fire prevention, Flammable materials, Materials handling and storage, Oil pollution, Petroleum, Tanks, Water pollution control, Water resources.

Dated: October 3, 1991.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 112 of the Code of Federal Regulations, is proposed to be amended as set forth below.

1. Part 112 is revised to read as follows:

PART 112—OIL POLLUTION PREVENTION

Sec.

112.1 General applicability and notification.
112.2 Definitions.
112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasures Plan.
112.4 Amendment of Spill Prevention, Control, and Countermeasures Plan by Regional Administrator.
112.5 Amendment of Spill Prevention, Control, and Countermeasures Plan by owners or operators.
112.6 Civil penalties for violation of the Oil Pollution Prevention regulation.
112.7 Spill Prevention, Control, and Countermeasures Plan general requirements.
112.8 Spill Prevention, Control, and Countermeasures Plan requirements for onshore facilities (excluding production facilities).
112.9 Spill Prevention, Control, and Countermeasures Plan requirements for onshore oil production facilities.
112.10 Spill Prevention, Control, and Countermeasures Plan requirements for onshore oil drilling and workover facilities.
112.11 Spill Prevention, Control, and Countermeasures Plan requirements for offshore oil drilling, production, or workover facilities.

Appendix A—Memorandum of Understanding Between the Secretary of Transportation and the Administrator of the Environmental Protection Agency. Section II—Definitions

Appendix B—Notification Form for Oil Storage Tanks

Authority: 33 U.S.C. 1321 and 1361; E.O. 11735, 38 FR 21243, 3 CFR 1971–1975 Comp., p. 791.

PART 112—OIL POLLUTION PREVENTION

§ 112.1 General applicability and notification.

(a) This part establishes procedures, methods, equipment, and other requirements to prevent the discharge of oil from non-transportation-related onshore and offshore facilities into or upon the navigable waters of the United States or adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act).

(b) Except as provided in paragraph (d) of this section:

(1) This part applies to owners or operators of non-transportation-related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, or consuming oil and oil products, which due to their location could reasonably be expected to discharge oil in quantities that may be harmful, as described in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act).

(2) This part applies to facilities having containers that are used for standby storage, for seasonal storage, or for temporary storage, or not otherwise considered "permanently closed" under § 112.2(o).

(3) This part applies to facilities having "bunkered tanks" and "partially buried tanks" as defined in § 112.2(c) and § 112.2(n), respectively, as well as tanks in subterranean vaults, all of which are considered aboveground storage containers for the purposes of this part.

(c) As provided in section 313 of the Clean Water Act (CWA), departments, agencies, and instrumentalities of the Federal government are subject to these regulations to the same extent as any person, except for the provisions of § 112.6.

(d) Except as provided in paragraph (e) of this section and the first sentence of § 112.7(a)(3), this part does not apply to:

(1) Facilities, equipment, or operations that are not subject to the jurisdiction of the Environmental Protection Agency (EPA) under section 311(j)(1)(C) of the CWA, as follows:

(i) Onshore and offshore facilities that, due to their location, could not reasonably be expected to discharge oil as described in § 112.1(b)(1) of this part. This determination shall be based solely upon a consideration of the geographical and location aspects of the facility (such as proximity to navigable waters or adjoining shorelines, land contour, drainage, etc.), and shall exclude consideration of manmade features such as dikes, equipment or other structures, which may serve to restrain, hinder, contain, or otherwise prevent a discharge of oil from reaching navigable waters of the United States or adjoining shorelines; and

(ii) Equipment or operations of vessels or transportation-related onshore and offshore facilities that are subject to authority and control of the Department of Transportation, as defined in the Memorandum of Understanding between the Secretary of Transportation

and the EPA Administrator, dated November 24, 1971, 36 FR 24080.

(2) Those facilities that meet both of the following requirements:

(i) The underground storage capacity of the facility is 42,000 gallons or less of oil. For purposes of this exemption, the underground storage capacity of a facility does not include the capacity of underground storage tanks, as defined in § 112.2(v), that are currently subject to the technical requirements of 40 CFR part 280. The underground storage capacity of a facility does not include the capacity of underground storage tanks that are "permanently closed," as defined in § 112.2(o).

(ii) The aboveground storage capacity of the facility is 1,320 gallons or less of oil, provided no single container has capacity in excess of 660 gallons. For purposes of this exemption, the aboveground storage capacity of a facility does not include the capacity of tanks that are underground storage tanks as defined in § 112.2(v) or that are "permanently closed" as defined in § 112.2(o).

(3) Offshore oil drilling, production, or workover facilities that are subject to the Operating Orders, notices, and regulations of the Minerals Management Service.

(4) Underground storage tanks, as defined in § 112.2(v), at any facility, where such tanks are subject to the technical requirements of 40 CFR part 280.

(e) Notification requirements. (1) Notification must be provided by the owner or operator of facilities that are subject to EPA jurisdiction under the CWA and have total aboveground storage capacities greater than 1,320 gallons of oil or aboveground storage in a single container greater than 660 gallons of oil. The owner or operator of these facilities must submit a written notice to EPA by (*Insert date two months after date of publication of the final rule*). This notice is required on a one-time basis for current facility owners or operators. Owners or operators of facilities that begin operations or who increase storage capacity so as to comply under the jurisdiction of this rule after (*Insert date 60 days after date of publication of the final rule*) also must notify the Regional Administrator before beginning facility operations.

(2) The written notice shall include the following: (i) The name of the owner and/or operator of the facility;

(ii) The name, address, and zip code of the facility; and

(iii) A listing of the total number and size of aboveground tanks at the facility, total aboveground storage capacity of the facility, distance to the nearest navigable waters, and where applicable and available, the facility's primary Dun & Bradstreet number and the primary Standard Industrial Classification.

(3) The notice does not require information concerning the number and size of underground storage tanks defined in § 112.2(v).

(f) This part provides for the preparation and implementation of Spill Prevention, Control, and Countermeasures (SPCC) Plans prepared in accordance with §§ 112.7, 112.8, 112.9, 112.10, and 112.11 designed to complement existing laws, regulations, rules, standards, policies, and procedures pertaining to safety standards, fire prevention, and pollution prevention rules, to form a comprehensive balanced Federal/State spill prevention program to minimize the potential for oil discharges. The SPCC Plan shall address all relevant spill prevention, control, and countermeasures necessary at the specific facility. Compliance with this part does not in any way relieve the owner or operator of an onshore or an offshore facility from compliance with other Federal, State, or local laws.

§ 112.2 Definitions.

For the purposes of this part: (a) *Breakout tank* means a container that is part of a pipeline facility regulated by the Department of Transportation and is used solely for the purpose of compensating for pressure surges or to control and maintain the flow of oil through pipelines. Such tanks are frequently in-line.

(b) *Bulk storage tank* means any container used to store oil. These tanks are used for purposes including, but not limited to, the storage of oil prior to use, while being used, or prior to further distribution in commerce.

(c) *Bunkered tank* means a storage tank constructed or placed in the ground by cutting the earth and recovering in a manner whereby the tank breaks the natural grade of the land.

(d) *Contiguous zone* means the zone established by the United States under Article 24 of the Convention of the Territorial Sea and Contiguous Zone, that is contiguous to the territorial sea and that extends nine miles seaward from the outer limit of the territorial area.

(e) *Discharge* includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping, but excludes discharges in compliance with a permit under section 402 of the CWA; discharges resulting from circumstances identified, reviewed, and made a part of the public record with respect to a permit issued or modified under section 402 of the CWA, and subject to a condition in such permit; or continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the CWA, that are caused by events occurring within the scope of relevant operating or treatment systems. For purposes of this part, the term "discharge" shall not include any discharge of oil that is authorized by a permit issued pursuant to section 13 of the River and Harbor Act of 1899 (30 Stat. 1121, 33 U.S.C. 407).

(f) *Facility* means any mobile or fixed, onshore or offshore building, structure, installation, equipment, pipe, or pipeline used in oil well drilling operations, oil production, oil refining, oil storage, and waste treatment, as described in Appendix A to this part. The boundaries of a facility may depend on several site-specific factors, including, but not limited to, the ownership or operation of buildings, structures, and equipment on the same site and the types of activity at the site.

(g) *Navigable waters* means the waters of the United States, including the territorial seas. The term includes:

(1) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters subject to the ebb and flow of the tide;

(2) All interstate waters, including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which could affect interstate or foreign commerce including any such waters:

(i) That are or could be used by interstate or foreign travelers for recreational or other purposes; or,

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or,

(iii) That are used or could be used for industrial purposes by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as waters of the United States under this section;

(5) Tributaries of waters identified in paragraphs (g)(1) through (4) of this section;

(6) The territorial sea; and

(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (g)(1) through (6) of this section.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds as defined in 40 CFR 123.11(m) which also meet the criteria of this definition) are not waters of the United States.

(h) *Offshore facility* means any facility of any kind (other than a vessel or public vessel) located in, on, or under any of the navigable waters of the United States, and any facility of any kind that is subject to the jurisdiction of the United States and is located in, on, or under any other waters.

(i) *Oil* means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

(j) *Oil drilling, production, or workover facilities (offshore)* may include all drilling or workover equipment, wells, flowlines, gathering lines, platforms, and auxiliary non-transportation-related equipment and facilities in a single geographical oil or gas field operated by a single operator.

(k) *Oil production facilities (onshore)* may include all wells, flowlines, separation equipment, storage facilities, gathering lines, and auxiliary non-transportation-related equipment and facilities in a single geographical oil or gas field operated by a single operator.

(l) *Onshore facility* means any facility of any kind located in, on, or under any land within the United States, other than submerged lands.

(m) *Owner or operator* means any person owning or operating an onshore facility or an offshore facility, and in the case of any abandoned offshore facility, the person who owned or operated or maintained such facility immediately prior to such abandonment.

(n) *Partially buried tank* means a storage tank that is partially inserted or constructed in the ground, but not fully covered with earth.

(o) *Permanently closed* is any tank or facility that has been closed in the following manner:

(1) All liquid and sludge must be removed from each tank and connecting lines. Any waste products removed must be disposed of in accordance with all applicable State and Federal requirements.

(2) Each tank must be rendered free of explosive vapor by testing the tank with a combustible gas indicator, or explosimeter, or other type of atmospheric monitoring instrument in order to determine the lower explosive limit (LEL). The EPA and Occupational Safety and Health Administration standard for a hazardous atmosphere, based on extensive industrial experience, is one that contains a concentration of combustible gas, vapor, or dust greater than 25 percent of the LEL of the material. Provisions must be made to eliminate the danger imposed by the tank as a safety hazard due to the presence of flammable vapors. Facilities are to ensure that closure is permanent, and that the tank vapors remain below the LEL.

(3) All connecting lines must be blanked off, and valves are to be closed and locked. Conspicuous signs are to be posted on the tank warning that it is a permanently closed tank and that vapors above the LEL are not present.

(p) *Person* includes an individual, firm, corporation, association, or a partnership.

(q) *Regional Administrator* means the EPA Regional Administrator or a designee of the Regional Administrator, in and for the Region in which the facility is located.

(r) *SPCC Plan or Plan* means the document required by § 112.3 of this part that details the equipment, manpower, procedures, and steps to prevent, control, and provide adequate countermeasures to an oil spill. The Plan is a written description of the facility's compliance with the procedures in this part.

(s) *Spill event* means a discharge of oil as described in § 112.1(b)(1) of this part.

(t) *Storage capacity* of a tank or container, for purposes of determining the applicability of this part, means the total capacity of the tank or container, whether the tank or container is filled with oil or a mixture of oil and other substances.

(u) *Transportation-related* and *non-transportation-related*, as applied to an onshore or offshore facility, are defined in Appendix A of this part, the Memorandum of Understanding between the Secretary of Transportation and the EPA Administrator, dated November 24, 1971, 36 FR 24080.

(v) *Underground storage tank* means any tank completely covered with earth. Tanks in subterranean vaults, bunkered tanks, or partially buried tanks are considered aboveground storage containers for the purpose of this part.

(w) *United States* means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Pacific Island Governments.

(x) *Vessel* means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel.

(y) *Wetlands* means those areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include playa lakes, swamps, marshes, bogs, and similar areas such as sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds.

§ 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasures Plan.

(a) Owners or operators of onshore and offshore facilities in operation on or before (*Insert date 60 days after date of publication of the final rule*) that have discharged or, due to their location, could reasonably be expected to discharge oil as described in § 112.1(b)(1) of this part, shall maintain a prepared and fully implemented facility SPCC Plan in writing and in accordance with § 112.7, and in accordance with §§ 112.8, 112.9, 112.10, and 112.11 as applicable to the facility.

(b) Owners or operators of onshore and offshore facilities that become operational after (*Insert date 60 days after date of publication of the final rule*), and could reasonably be expected to discharge oil as described in § 112.1(b)(1) of this part, shall prepare a facility SPCC Plan in accordance with § 112.7, and in accordance with any of the following sections that apply to the facility: §§ 112.8, 112.9, 112.10, and 112.11. The Plan shall be prepared and fully implemented before a facility begins operations, unless an extension has been granted by the Regional Administrator as provided for in paragraph (f) of this section.

(c) Owners or operators of onshore and offshore mobile or portable facilities, such as onshore drilling or workover rigs, barge mounted offshore drilling or workover rigs, and portable fueling facilities shall prepare, implement, and maintain a facility SPCC Plan as required by paragraph (a), (b), and (d) of this section. The owners or operators of such facility need not prepare a new Plan each time the facility is moved to a new site. The Plan may be a general plan, prepared in accordance with § 112.7, and in accordance with §§ 112.10 and 112.11 where applicable to the facility, using good engineering practice. When the mobile or portable facility is moved, it must be located and installed using the spill prevention practices outlined in the Plan for the facility. No mobile or

portable facility subject to this regulation shall operate unless the Plan has been implemented. The Plan shall only apply while the facility is in a fixed (non-transportation) operating mode.

(d) No SPCC Plan shall be effective to satisfy the requirements of this part unless it has been reviewed by a Registered Professional Engineer and certified by the Registered Professional Engineer. By means of this certification, the Engineer shall attest: (1) That the Engineer is familiar with the requirements of this part; (2) that the Engineer has visited and examined the facility; (3) that the Plan has been prepared in accordance with good engineering practice and with the requirements of this part; (4) that required testing has been completed; and, (5) that the Plan is adequate for the facility. Such certification shall in no way relieve the owner or operator of an onshore or offshore facility of the duty to prepare and fully implement such Plan in accordance with § 112.7; in accordance with §§ 112.8, 112.9, 112.10, and 112.11 where applicable; and as required by paragraphs (a), (b), and (c) of this section.

(e) Owners and operators of a facility for which a facility SPCC Plan is required pursuant to paragraph (a), (b), or (c) of this section shall:

(1) Maintain a complete copy of the Plan at the facility if the facility is normally attended at least four hours per day, or at the nearest field office if the facility is not so attended; and

(2) Have the Plan available for the Regional Administrator or authorized representative for on-site review during normal working hours

(f) Extensions of time.

(1) The Regional Administrator may authorize an extension of time for the preparation and full implementation of a Plan beyond the time permitted for the preparation and implementation of a Plan pursuant to paragraph (b) of this section where it is determined that the owner or operator of a facility subject to paragraph (b) of this section cannot fully comply with the requirements of this part as a result of either nonavailability of qualified personnel, or delays in construction or equipment delivery beyond the control and without the fault of such owner or operator or their respective agents or employees.

(2) Any owner or operator seeking an extension of time pursuant to paragraph (f)(1) of this section may submit a letter of request to the Regional Administrator. Such letter shall include:

(i) A copy of the Plan, if completed;

(ii) A full explanation of the cause for any such delay and the specific aspects of the Plan affected by the delay;

(iii) A full discussion of actions being taken or contemplated to minimize or mitigate such delay;

(iv) A proposed time schedule for the implementation of any corrective actions being taken or contemplated, including interim dates for completion of tests or studies, installation and operation of any necessary equipment, or other preventive measures. In addition, such owner or operator may present additional oral or written statements in support of the letter of request.

(3) The submission of a letter of request for extension of time pursuant to paragraph (f)(2) of this section shall in no way relieve the owner or operator from the obligation to comply with the requirements of § 112.3(b). Where an extension of time is authorized by the Regional Administrator for particular equipment or other specific aspects of the Plan, such extension shall in no way affect the owner's or operator's obligation to comply with the requirements of § 112.3(b) with respect to other equipment or other specific aspects of the Plan for which an extension has not been expressly authorized.

§ 112.4 Amendment of Spill Prevention, Control, and Countermeasures Plan by Regional Administrator.

(a) Notwithstanding compliance with § 112.3, whenever a facility subject to § 112.3(a), (b) or (c) has discharged, in a single spill event, more than 1,000 U.S. gallons of oil as described in § 112.1(a), or discharged oil as described in § 112.1(b)(1) in two spill events occurring within any consecutive twelve month period, the owner or operator of such facility shall submit to the Regional Administrator, within 60 days from the time such facility becomes subject to this section, the following:

(1) Name of the facility;

(2) Name(s) of the owner or operator of the facility;

(3) Location of the facility;

(4) Name and address of the registered agent of the owner or operator, if any;

(5) Date and year of initial facility operation;

(6) Maximum storage or handling capacity of the facility and normal daily throughput;

(7) Description of the facility, including maps, flow diagrams, and topographical maps;

(8) A complete copy of the Plan with any amendments;

(9) The cause(s) of such spill, including a failure analysis of the system or subsystem in which the failure occurred;

(10) Exactly what and how much was spilled;

(11) The corrective actions and/or countermeasures taken, including an adequate description of equipment repairs and/or replacements;

(12) Additional preventive measures taken or contemplated to minimize the possibility of recurrence; and

(13) Such other information as the Regional Administrator may reasonably require pertinent to the Plan or spill event.

(b) Section 112.4 shall not apply until the expiration of the time permitted for the preparation and implementation of the Plan pursuant to § 112.3(f).

(c) The owner or operator shall send to the agency in charge of oil pollution control activities in the State in which the facility is located a complete copy of all information provided to the Regional Administrator pursuant to paragraph (a) of this section. Upon receipt of such information such State agency may conduct a review and make recommendations to the Regional Administrator as to further procedures, methods, equipment, and other requirements for equipment necessary to prevent and to contain discharges of oil from such facility.

(d) After review of the SPCC Plan for a facility subject to paragraph (a) of this section, together with all other information submitted by the owner or operator of such facility, and by the State agency under paragraph (c) of this section, the Regional Administrator may require the owner or operator of such facility to amend the Plan if she/he finds that the Plan does not meet the requirements of this part or that amendment of the Plan is necessary to prevent and to contain discharges of oil from such facility. After review of the materials submitted by the owner or operator of a facility as required in § 112.7(d), the Regional Administrator may approve the Plan or require amendment of the Plan.

(e) When the Regional Administrator proposes to require an amendment to the SPCC Plan, the facility operator shall be notified by certified mail addressed to, or by personal delivery to, the facility owner or operator, that the Regional Administrator proposes to require an amendment to the Plan, and the terms of such amendment shall be specified. If the facility owner or operator is a corporation, a copy of such notice also shall be mailed to the registered agent, if any, of such corporation in the State where such facility is located. Within 30 days from receipt of such notice, the facility owner or operator may submit written information, views, and

arguments on the amendment. After considering all relevant material presented, the Regional Administrator shall notify the facility owner or operator of any amendment required or shall rescind the notice. The amendment required by the Regional Administrator shall become part of the Plan 30 days after such notice, unless the Regional Administrator, for good cause, specifies another effective date. The owner or operator of the facility shall implement the amendment of the Plan as soon as possible, but not later than six months after the amendment becomes part of the Plan, unless the Regional Administrator specifies another date.

(f) An owner or operator may appeal a decision made by the Regional Administrator requiring an amendment to the SPCC Plan. The appeal shall be made to the EPA Administrator and must be made in writing within 30 days of receipt of the notice from the Regional Administrator requiring the amendment. A complete copy of the appeal must be sent to the Regional Administrator at the time the appeal is made. The appeal shall contain a clear and concise statement of the issues and points of fact in the case. It also may contain additional information from the owner or operator, or from any other person. The EPA Administrator or her/his designee may request additional information from the owner or operator, or from any other person. The EPA Administrator or her/his designee shall render a decision within 60 days of receiving the appeal and shall notify the owner or operator of the decision.

§ 112.5 Amendment of Spill Prevention, Control, and Countermeasures Plan by owners or operators.

(a) Owners or operators of facilities subject to § 112.3 (a), (b), or (c) shall amend the SPCC Plan for such facility in accordance with § 112.7, and with §§ 112.8, 112.9, 112.10, and 112.11 where applicable, when there is a change in facility design, construction, operation, or maintenance that materially affects the facility's potential to discharge oil as described in § 112.1(b)(1) of this part. Changes requiring amendment of the Plan include, but are not limited to: Commission or decommission of tanks; replacement, reconstruction, or movement of tanks; reconstruction, replacement, or installation of piping systems; construction or demolition that might alter secondary containment structures; or revision of standard operation or maintenance procedures at a facility.

(b) Notwithstanding compliance with paragraph (a) of this section, owners and operators of facilities subject to § 112.3 (a), (b), or (c) shall complete a review and evaluation of their respective Plans at least once every three years from the date such facility becomes subject to this part. As a result of this review and evaluation, the owner or operator shall amend the SPCC Plan within six months of the review to include more effective prevention and control technology if: (1) Such technology will significantly reduce the likelihood of a spill event from the facility; and (2) such technology has been field-proven at the time of the review.

(c) Except for changes to the contact list required by § 112.7(a)(3)(ix), no amendment to a Plan shall be effective to satisfy the requirements of this section unless it has been certified by a Registered Professional Engineer in accordance with § 112.3(d).

§ 112.6 Civil penalties for violation of the Oil Pollution Prevention regulation.

Owners or operators of facilities subject to § 112.3 (a), (b), or (c) who violate the requirements of part 112 by failing or refusing to comply with any of the provisions of §§ 112.1(e), 112.3, 112.4, 112.5, 112.7, 112.8, 112.9, 112 10, or 112.11 shall be liable for a civil penalty in accordance with the CWA, as amended by the OPA of 1990.

§ 112.7 Spill Prevention, Control, and Countermeasures Plan general requirements.

(a) The SPCC Plan shall be a carefully thought-out written description of the facility's compliance with the requirements of all applicable elements of §§ 112.7, 112.8, 112.9, 112.10, and 112.11 and shall be prepared in accordance with good engineering practice. The Plan shall have the full approval of management at a level with authority to commit the necessary resources to fully implement the Plan.

(1) The complete Plan shall follow the sequence outlined below, and include a discussion of the facility's conformance with the requirements listed.

(2) The Plan may deviate from the requirements in paragraph (c) of this section and §§ 112.8, 112.9, 112.10, and 112.11, where applicable to a specific facility provided equivalent protection is provided by some other means of spill prevention, control, or countermeasures. Where the Plan does not conform to the applicable requirements of paragraph (c) of this section or §§ 112.8, 112.9, 112.10, and 112.11, the Plan shall state the reasons for non-conformance and describe in detail alternate methods and how equivalent protection will be achieved. The Regional Administrator can overrule the waiver/equivalent alternative measure if it is not adequately protective.

(3) The complete Plan must describe the facility's physical plant and include a facility diagram, which must have the location and contents of all tanks marked. The Plan must also address the following:

(i) Unit-by-unit storage capacity;

(ii) Type and quantity of oil stored;

(iii) Estimates of quantity of oils potentially discharged;

(iv) Possible spill pathways;

(v) Spill prevention measures, including procedures for routine handling of products (loading, unloading, and facility transfers, etc.);

(vi) Spill controls such as secondary containment around tanks and other structures, equipment, and procedures for the control of a discharge;

(vii) Spill countermeasures for spill discovery, response, and cleanup (facility's capability and those that might be required of a contractor);

(viii) Disposal of recovered materials in accordance with applicable legal requirements; and

(ix) Contact list and phone numbers for the facility response coordinator, National Response Center, cleanup contractors, fire departments, Local Emergency Planning Committee, State Emergency Response Commission, and downstream water suppliers who must be contacted in case of a discharge to navigable waters.

(4) Documentation in the Plan shall enable a person reporting a spill to provide information on the exact address and phone number of the facility, the spill date and time, the type of material spilled, estimates of the total quantity spilled, estimates of the quantity spilled into navigable water, the source of the spill, a description of the affected medium, the cause of the spill, any damages or injuries caused by the spill, actions being used to stop, remove, and mitigate the effects of the discharge, whether an evacuation may be needed, and the names of individuals and/or organizations who have also been contacted.

(5) Portions of the Plan describing procedures to be used in emergency circumstances shall be organized in a manner to make them readily useable in an emergency with appropriate supporting material included as appendices.

(b) Experience has indicated that a reasonable potential for oil discharge from tank overflow, rupture, or leakage, and faulty ancillary equipment exists. Therefore, the Plan shall include a prediction of the direction, rate of flow, and total quantity of oil that could be

discharged from the facility as a result of each major type of failure.

(c) Appropriate containment and/or drainage control structures or equipment to prevent discharged oil from reaching a navigable water course shall be provided. The entire containment system, including walls and floor, shall be impervious to oil for 72 hours and shall be constructed so that any discharge from a primary containment system, such as a tank or pipe, will not permeate, drain, infiltrate, or otherwise escape to surface waters before cleanup occurs. One or more of the following prevention systems or its equivalent shall be used as a minimum:

(1) Onshore facilities:

(i) Dikes, berms, or retaining walls;

(ii) Curbing;

(iii) Culverting, gutters, or other drainage systems;

(iv) Weirs, booms, or other barriers;

(v) Spill diversion ponds;

(vi) Retention ponds; or

(vii) Sorbent materials

(2) Offshore facilities:

(i) Curbing, drip pans; or

(ii) Sumps and collection systems.

(d) When it is determined that the installation of structures or equipment listed in § 112.7(c) to prevent discharged oil from reaching the navigable waters is not practicable from any onshore or offshore facility, the owner or operator shall clearly demonstrate such impracticability; conduct integrity testing of tanks every five years at a minimum; conduct integrity and leak testing of the valves and piping every year at a minimum; and provide the Regional Administrator for approval under § 112.4(d) the following:

(1) An oil spill contingency plan that must include, at a minimum, a description of response plans, personnel needs, and methods of mechanical containment; steps to be taken for removal of spilled oil; access and availability of sorbents, booms, and other equipment; and such other information as required by the Regional Administrator. The oil spill contingency plan is part of the Plan and, therefore, is subject to review and approval by the Regional Administrator. The oil spill contingency plan shall be a stand-alone section of the SPCC Plan. Oil spill contingency plans provided to satisfy the provisions of this paragraph shall not rely in whole or in part upon the use of dispersants and other chemicals listed under subpart J of the National Contingency Plan (NCP) (40 CFR part 300) unless the Regional Administrator explicitly approves the inclusion of such methods in the contingency plan. A separate and additional approval is required by subpart J of the NCP for the use of such dispersants and other chemicals.

(2) A written commitment of manpower, equipment, and materials required to control expeditiously and remove any quantity of oil that may be discharged. It is recommended that the owner or operator consider factors such as financial capability in making a written commitment of manpower, equipment, and materials.

(e) *Inspection, tests, and records.* Inspections and tests required by this part shall be in accordance with written procedures developed for the facility by the owner or operator or the certifying engineer. These written procedures and a record of the inspections and tests, signed by the appropriate supervisor or inspector, shall be maintained with the SPCC Plan and maintained for a period of five years.

(f) *Personnel, training, and spill prevention procedures.* (1) Owners or operators are responsible for properly instructing their personnel in the operation and maintenance of equipment to prevent discharges of oil and in applicable pollution control laws, rules, and regulations. Training exercises should be conducted at least yearly for all personnel, and training should be given to new employees within one week of beginning work.

(2) Each applicable facility shall have a designated person who is accountable for oil spill prevention and who reports to line management.

(3) Owners or operators shall schedule and conduct spill prevention briefings for their operating personnel at least once a year to assure adequate understanding of the SPCC Plan for that facility. Such briefings shall highlight and describe known spill events or failures, malfunctioning components, and recently developed precautionary measures.

(g) *Security (excluding oil production facilities).*

(1) It is recommended that all plants handling, processing, and storing oil be fully fenced and when fenced, entrance gates shall be locked and/or guarded when the plant is not in production or is unattended.

(2) The master flow and drain valves and any other valves permitting direct outward flow of the tank's contents to the surface shall have adequate security measures to ensure that they remain in the closed position when in non-operating or non-standby status.

(3) The starter control on all pumps shall be locked in the "off" position and be located at a site accessible only to authorized personnel when the pumps are in a non-operating or non-standby status.

(4) The loading/unloading connections of oil piping shall be securely capped or blank-flanged when not in service or when in standby service for a period of six months or more. This security practice also shall apply to piping that is emptied of liquid content either by draining or by inert gas pressure.

(5) It is recommended that facility lighting be commensurate with the type and location of the facility. Consideration shall be given to: (i) Discovery of spills occurring during hours of darkness, both by operating personnel, if present, and by non-operating personnel (the general public, local police, etc.) and (ii) prevention of spills occurring through acts of vandalism.

(h) *Facility tank car and tank truck loading/unloading rack (excluding offshore facilities).* (1) Tank car and tank truck loading/unloading procedures shall meet the minimum requirements and regulations established by State or Federal law.

(2) Where rack area drainage does not flow into a catchment basin or treatment facility designed to handle spills, a quick drainage system shall be used for tank truck loading and unloading areas. The containment system shall be designed to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded in the plant.

(3) An interlocked warning light or physical barrier system, or warning signs, shall be provided in loading/unloading areas to prevent vehicular departure before complete disconnection of flexible or fixed transfer lines.

(4) Prior to filling and departure of any tank car or tank truck, the lower-most drain and all outlets of such vehicles shall be closely examined for leakage, and, if necessary, tightened, adjusted, or replaced to prevent liquid leakage while in transit.

(i) In addition to the minimal prevention standards listed under § 112.7 (c), (e), (f), (g), and (h), sections of the Plan shall include a complete discussion of conformance with the applicable requirements and other effective spill prevention and containment procedures listed in §§ 112.8, 112.9, 112.10, and 112.11 (or, if more stringent, with State rules, regulations, and guidelines).

§ 112.8 Spill Prevention, Control, and Countermeasures Plan requirements for onshore facilities (excluding production facilities).

(a) In addition to the specific spill prevention and containment procedures

listed under this section, onshore facilities (excluding production facilities) must also address the general requirements listed under § 112.7 in the SPCC Plan.

(b) *Facility drainage (onshore); (excluding production facilities).* (1) Drainage from diked storage areas shall be restrained by valves or other positive means to prevent a spill or other excessive leakage of oil into the drainage system or in-plant effluent treatment system, except where facility systems are designed to handle such leakage. Diked areas may be emptied by pumps or ejectors; however, these shall be manually activated and the condition of the accumulation shall be examined before starting to ensure no oil will be discharged into the water.

(2) Flapper-type drain valves shall not be used to drain diked areas. Valves used for the drainage of diked areas shall, as far as practical, be of manual, open-and-closed design. When facility drainage drains directly into water courses and not into wastewater treatment plants, retained storm water shall be inspected as provided in paragraphs (c)(3) (ii), (iii), and (iv) of this section before drainage.

(3) Facility drainage systems from undiked areas with a potential for oil spill contamination shall flow into ponds, lagoons, or catchment basins designed to retain oil or return it to the facility. It is recommended that catchment basins not be located in areas subject to periodic flooding.

(4) If facility drainage is not engineered as above, the final discharge of all in-plant drainage shall be equipped with a diversion system that would, in the event of an uncontrolled spill, retain oil in the facility.

(5) Where drainage waters are treated in more than one treatment unit, it is recommended that natural hydraulic flow be used. If pump transfer is needed, two "lift" pumps shall be provided, and at least one of the pumps shall be provided, and at least one of the pumps shall be permanently installed when such treatment is continuous. Whatever techniques are used, facility drainage systems shall be adequately engineered so that, in the event of equipment failure or human error at the facility, oil will be prevented from reaching navigable waters of the United States, adjoining shorelines, or other waters that would be affected by discharging oil as described in § 112.1(b)(1) of this part.

(6) For facilities in locations subject to flooding, it is recommended that the SPCC Plan address additional requirements for events that occur during a period of flooding.

(c) *Bulk storage containers (onshore); (excluding production facilities).* (1) No tank shall be used for the storage of oil unless its material and construction are compatible with the material stored and conditions of storage such as pressure, temperature, etc. It is recommended that the construction, materials, installation, and use of tanks conform with relevant portions of industry standards such as API, NFPA, UL, or ASME standards, which are required in the application of good engineering practice for the construction and operation of the tank.

(2) All bulk storage tank installations shall be constructed so that a secondary means of containment is provided for the entire contents of the largest single tank and sufficient freeboard to allow for precipitation. Diked areas shall be sufficiently impervious to contain spilled oil for at least 72 hours. Dikes, containment curbs, and pits are commonly employed for this purpose, but they may not always be appropriate. An alternate system could consist of a complete drainage trench enclosure arranged so that a spill could terminate and be safely confined in an in-plant catchment basin or holding pond.

(3) Drainage of rainwater from the diked area into a storm drain or an effluent discharge emptying into an open watercourse, lake, or pond, and bypassing the in-plant treatment system may be acceptable if:

(i) The bypass valve is normally sealed closed.

(ii) Inspection of the run-off rainwater ensures compliance with applicable water quality standards and will not cause a discharge that may be harmful, as described in 40 CFR part 110.

(iii) The bypass valve is opened, and resealed following draining under responsible supervision.

(iv) Adequate records are kept of such events.

(4) Underground metallic storage tanks represent a potential for undetected spills. A new buried installation shall be protected from corrosion by coatings, cathodic protection, or other effective methods compatible with local soil conditions. It is recommended that such buried tanks at least be subjected to regular leak testing.

(5) It is recommended that partially buried or bunkered metallic tanks be avoided, since partial burial in earth can cause rapid corrosion of metallic surfaces, especially at the earth/air interface. Partially buried and bunkered tanks shall be protected from corrosion by coatings, cathodic protection, or other effective methods compatible with local soil conditions.

(6) Aboveground tanks shall be subject to integrity testing every ten years and when material repairs, etc. are done, taking into account tank design (floating roof, for example) and using such techniques or combinations of such techniques as hydrostatic testing, radiographic testing, visual inspections, ultrasonic testing, acoustic emissions testing, or a system of non-destructive shell testing. Comparison records shall be kept, and tank supports and foundations shall be included in these inspections. In addition, the outside of the tank shall frequently be observed by operating personnel for signs of deterioration, leaks, or accumulation of oil inside diked areas.

(7) To control leakage through defective internal heating coils:

(i) The steam return or exhaust lines from internal heating coils, which discharge into an open water course, shall be monitored for contamination, or passed through a settling tank, skimmer, or other separation or retention system. It is recommended that these systems be designed to hold the entire contents of the affected tank, be of sufficient size to contain a spill that may occur when the system is not being monitored or observed, or have fail-safe oil leakage detectors.

(ii) It is recommended that the feasibility of installing an external heating system also be considered.

(8) New and old tank installations shall, as far as practical, be fail-safe engineered or updated into a fail-safe engineered installation to avoid spills. One or more of the following devices shall be provided:

(i) High liquid level alarms with an audible or visual signal at a constantly manned operation or surveillance station; in smaller plants an audible air vent may suffice.

(ii) Considering size and complexity of the facility, high liquid level pump cutoff devices set to stop flow at a predetermined tank content level.

(iii) Direct audible or code signal communication between the tank gauger and the pumping station.

(iv) A fast response system for determining the liquid level of each bulk storage tank, such as digital computers, telepulse, or direct vision gauges or their equivalent.

(v) Other devices can be considered for installation as alternate technologies, as allowed under § 112.7(a)(2).

(vi) Liquid level sensing devices shall be regularly tested to ensure proper operation.

(9) Effluents that are discharged into navigable waters shall have disposal

facilities observed frequently enough to detect possible system upsets that could cause an oil spill event.

(10) Visible oil leaks, which result in a loss of oil from tank seams, gaskets, rivets, and bolts sufficiently large to cause the accumulation of oil in diked areas, shall be promptly corrected. Accumulated oil or oil contaminated materials resulting from such discharge shall be completely removed within 72 hours from the time the spill event occurs.

(11) Mobile or portable oil storage tanks (onshore) shall be positioned or located so as to prevent oil discharges. It is recommended that a secondary means of containment, such as dikes or catchment basins, be furnished for the largest single compartment or tank. It is recommended that these facilities be located where they will not be subject to periodic flooding or washout.

(d) *Facility transfer operations, pumping, and in-plant process (onshore) (excluding production facilities).* (1) It is recommended that all piping shall be placed aboveground, where possible. New or replaced buried piping installations shall have a protective wrapping and coating and shall be cathodically protected or otherwise satisfy the corrosion protection standards for piping in 40 CFR part 280. If a section of buried line is exposed for any reason, it shall be carefully examined for deterioration. If corrosion damage is found, additional examination and corrective action shall be taken as indicated by the magnitude of the damage. It is recommended that buried piping installations comply to the extent applicable with all of the relevant provisions in 40 CFR part 280.

(2) When piping is not in service or in standby service for six months or more, the terminal connection at the transfer point shall be capped or blank-flanged, and marked as to origin.

(3) Pipe supports shall be properly designed to minimize abrasion and corrosion and allow for expansion and contraction.

(4) All aboveground valves, piping, and appurtenances shall be subjected to monthly examinations by operating personnel, at which time the general condition of items such as flange joints, expansion joints, valve glands and bodies, catch pans, pipe supports, locking of valves, and metal surfaces shall be assessed. In addition, it is recommended that facility owners or operators conduct annual integrity and leak testing of buried piping or monitor buried piping on a monthly basis. Records of such testing or monitoring shall be maintained for five years. It is recommended that all valves, pipes, and appurtenances conform to relevant industry codes such as ASME standards.

(5) Vehicular traffic granted entry into the facility shall be warned orally or by appropriate signs to be sure that the vehicle, because of its size, will not endanger aboveground piping or other oil transfer operations. It is recommended that weight restrictions be posted, as applicable, to prevent damage to underground piping.

§ 112.9 Spill Prevention, Control, and Countermeasures Plan requirements for onshore oil production facilities.

(a) In addition to the specific spill prevention and containment procedures listed under this section, onshore production facilities must also address the general requirements listed under § 112.7 in the SPCC Plan.

(b) Onshore oil production facilities are defined in § 112.2(k).

(c) *Oil production facility (onshore) drainage.* (1) At tank batteries and central treating stations where an accidental discharge of oil would have a reasonable possibility of reaching navigable waters, the dikes or equivalent measures required under § 112.7(c)(1) shall have drains closed and sealed at all times, except when rainwater is being drained. Prior to drainage, the diked area shall be inspected and actions taken as provided in § 112.8(c)(3) (ii), (iii), and (iv). Accumulated oil on the rainwater shall be removed and returned to storage or disposed of in accordance with approved methods.

(2) Field drainage ditches, road ditches, and oil traps, sumps, or skimmers, if such exist, shall be inspected at regularly scheduled intervals for accumulation of oil or oil-contaminated soil that may have escaped from small leaks. Any such accumulations shall be removed within 72 hours.

(3) For facilities in locations subject to flooding, it is recommended that the SPCC Plan address additional requirements for events that occur during a period of flooding.

(d) *Oil production facility (onshore) bulk storage tanks.* (1) No tank shall be used for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage. It is recommended that the construction, materials, installation, and use of new tanks conform with relevant portions of industry standards, which are required in the application of good engineering practice for the construction and operation of the tank.

(2) All tank battery and central treating plant installations shall be provided with a secondary means of containment for the entire contents of the largest single tank in use and sufficient freeboard to allow for precipitation, if feasible, or alternate systems, such as those outlined in § 112.7(c)(1). Drainage from undiked areas showing a potential for contamination shall be safely confined in a catchment basin or holding pond.

(3) All tanks containing oil shall be visually examined for deterioration and maintenance needs at least once a year. Such examination shall include the foundation and supports of tanks above the ground surface. The schedule and records for examinations of tanks shall be maintained by the owner or operator for a period of five complete calendar years irrespective of changes in ownership.

(4) It is recommended that new and old tank battery installations, as far as practical, be fail-safe engineered or updated into a fail-safe engineered installation to prevent spills. It is recommended that appropriate API, NFPA, and ASME standards be referenced. Consideration shall be given to providing one or more of the following:

(i) Adequate tank capacity to assure that a tank will not overfill if a pumper/gauger is delayed in making regular rounds.

(ii) Overflow equalizing lines between tanks so that a full tank can overflow to an adjacent tank.

(iii) Adequate vacuum protection to prevent tank collapse during a pipeline run.

(iv) High level sensors to generate and transmit an alarm signal to the computer where facilities are a part of a computer production control system.

(e) *Facility transfer operations, oil production facility (onshore).* (1) All aboveground valves and piping shall be examined monthly for general condition of items such as flange joints, valve glands and bodies, drip pans, pipe supports, pumping well polish rod stuffing boxes, bleeder and gauge valves. The schedule of examinations shall be included in the SPCC Plan and records of the examinations shall be maintained for a period of five years.

(2) Salt water (oil field brine) disposal facilities shall be examined often, particularly following a sudden change in atmospheric temperature, to detect possible system upsets capable of causing an oil discharge.

(3) Production facilities shall have a program of flowline maintenance to prevent spills from this source. It is

recommended that the program include monthly examinations, corrosion protection, flowline replacement, and adequate records.

§ 112.10 Spill Prevention, Control, and Countermeasures Plan requirements for onshore oil drilling and workover facilities.

(a) In addition to the specific spill prevention and containment procedures listed under this section, onshore oil drilling and workover facilities must also address the general requirements listed under § 112.7 in the SPCC Plan.

(b) Mobile drilling or workover equipment shall be positioned or located so as to prevent spilled oil discharges.

(c) Depending on the location, catchment basins or diversion structures may be necessary to intercept and contain spills of fuel, crude oil, or oily drilling fluids.

(d) Before drilling below any casing string or during workover operations, a blowout prevention (BOP) assembly and well control system shall be installed, when necessary, that is capable of controlling any well-head pressure expected to be encountered while that BOP assembly is on the well. Casing and BOP installations shall be in accordance with State regulatory agency requirements.

§ 112.11 Spill Prevention, Control, and Countermeasures Plan requirements for offshore oil drilling, production, or workover facilities.

(a) In addition to the specific spill prevention and containment procedures listed under this section, offshore oil drilling, production or workover facilities must also address the general requirements listed under § 112.7 in the SPCC Plan.

(b) Offshore oil drilling, production, and workover facilities are defined in § 112.2(j). As provided in § 112.1(d)(3), such facilities that are subject to the Operating Orders, notices, and regulations of the Minerals Management Service are not subject to this part.

(c) Oil drainage collection equipment shall be used to prevent and control small oil spillage around pumps, glands, valves, flanges, expansion joints, hoses, drain lines, separators, treaters, tanks, and allied equipment. Facility drains shall be controlled and directed toward a central collection sump or equivalent collection system sufficient to prevent the facility from discharging oil as described in § 112.1(b)(1) of this part. Where drains and sumps are not practicable, oil contained in collection equipment shall be removed as often as necessary to prevent overflow, but not less than once a year.

(d) For facilities employing a sump system, the sump and drains shall be adequately sized and a spare pump or equivalent method shall be available to remove liquid from the sump and assure that oil does not escape. A monthly preventive maintenance inspection and testing program shall be employed to assure reliable operation of the liquid removal system and pump start-up device. Redundant automatic sump pumps and control devices may be required on some installations.

(e) At facilities with areas where separators and treaters are equipped with dump valves for which the predominant mode of failure is in the closed position and pollution risk is high, the facility shall be specially equipped to prevent the escape of oil. Prevention of escaped oil can be accomplished by extending the flare line to a diked area if the separator is near shore, equipping the separator with a high liquid level sensor that will automatically shut-in wells producing to the separator, installing parallel redundant dump valves, or using other feasible alternatives to prevent oil discharges.

(f) Atmospheric storage or surge containers shall be equipped with high liquid level sensing devices or other acceptable alternatives to prevent oil discharges.

(g) Pressure tanks shall be equipped with high and low pressure sensing devices to activate an alarm and/or control the flow or with other acceptable alternatives to prevent oil discharges.

(h) Tanks shall be equipped with suitable corrosion protection. It is recommended that appropriate National Association of Corrosion Engineers standards for corrosion protection be followed.

(i) A written procedure for inspecting and testing pollution prevention equipment and systems shall be prepared and maintained at the facility. Such procedures shall be included as part of the SPCC Plan.

(j) Testing and inspection of the pollution prevention equipment and systems at the facility shall be conducted by the owner or operator on a scheduled periodic basis, but not less than monthly, commensurate with the complexity, conditions, and circumstances of the facility or other appropriate regulations. Simulated spill testing shall be the method used for testing and inspecting human and equipment pollution control and countermeasures systems unless the owner or operator demonstrates that another method provides equivalent alternative protection.

(k) Surface and subsurface well shut-in valves and devices in use at the facility shall be sufficiently described to determine their method of activation or control, e.g., pressure differential, change in fluid or flow conditions, combination of pressure and flow, manual or remote control mechanisms. Detailed records for each well, while not necessarily part of the Plan, shall be kept by the owner or operator for a period of not less than five years.

(l) Before drilling below any casing string and during workover operations, a BOP preventor assembly and well control system shall be installed that is capable of controlling any well-head pressure expected to be encountered while that BOP assembly is on the well. Casing and BOP installations shall be in accordance with State regulatory agency requirements.

(m) It is recommended that extraordinary well control measures be provided if emergency conditions, including fire, loss of control and other abnormal conditions, occur. It is recommended that the degree of control system redundancy vary with hazard exposure and probable consequences of failure. It is recommended that surface shut-in systems include redundant or "fail close" valving. Subsurface safety valves may not be needed in producing wells that will not flow, but they should be installed as required by applicable State regulations.

(n) All manifolds (headers) shall be equipped with check valves on individual flowlines.

(o) If the shut-in well pressure is greater than the working pressure of the flowline and manifold valves up to and including the header valves associated with that individual flowline, the flowline shall be equipped with a high pressure sensing device and shut-in valve at the wellhead unless provided with a pressure relief system to prevent over-pressuring.

(p) All piping appurtenant to the facility shall be protected from corrosion. It is recommended that the method used, such as protective coatings or cathodic protection, be discussed.

(q) Sub-marine piping appurtenant to the facility shall be adequately protected against environmental stresses and other activities, such as fishing operations.

(r) Sub-marine piping appurtenant to the facility shall be in good operating condition at all times and inspected on a scheduled periodic basis for failures. Such inspections shall be documented and maintained at the facility for a period of five years.

(s) To prevent misunderstanding of joint and separate duties and

obligations for performing work in a safe and pollution-free manner, it is recommended that written instructions be prepared by the owner or operator for contractors and subcontractors to follow whenever contract activities include servicing a well or systems appurtenant to a well or pressure vessel. Such instructions and procedures shall be maintained at the offshore production facility. Under certain circumstances and conditions, such contractor activities may require the presence at the facility of an authorized representative of the owner or operator who would intervene when necessary to prevent a spill event.

Appendix A—Memorandum of Understanding Between the Secretary of Transportation and the Administrator of the Environmental Protection Agency.

Section II—Definitions

The Environmental Protection Agency and the Department of Transportation agree that for the purposes of Executive Order 11548, the term:

(1) *Non-transportation-related onshore and offshore facilities* means:

(A) Fixed onshore and offshore oil well drilling facilities including all equipment and appurtenances related thereto used in drilling operations for exploratory or development wells, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(B) Mobile onshore and offshore oil well drilling platforms, barges, trucks, or other mobile facilities including all equipment and appurtenances related thereto when such mobile facilities are fixed in position for the purpose of drilling operations for exploratory or development wells, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(C) Fixed onshore and offshore oil production structures, platforms, derricks, and rigs including all equipment and appurtenances related thereto, as well as completed wells and the wellhead separators, oil separators, and storage facilities used in the production of oil, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(D) Mobile onshore and offshore oil production facilities including all equipment and appurtenances related thereto as well as completed wells and wellhead equipment, piping from wellheads to oil separators, oil separators, and storage facilities used in the production of oil when such mobile facilities are fixed in position for the purpose of oil production operations, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(E) Oil refining facilities including all equipment and appurtenances related thereto as well as in-plant processing units, storage units, piping, drainage systems and waste treatment units used in the refining of oil, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(F) Oil storage facilities including all equipment and appurtenances related thereto as well as fixed bulk plant storage, terminal oil storage facilities, consumer storage, pumps and drainage systems used in the storage of oil, but excluding inline or breakout storage tanks needed for the continuous operation of a pipeline system and any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(G) Industrial, commercial, agricultural, or public facilities which use and store oil, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(H) Waste treatment facilities including in-plant pipelines, effluent discharge lines, and storage tanks, but excluding waste treatment facilities located on vessels and terminal storage tanks and appurtenances for the reception of oily ballast water or tank washings from vessels and associated systems used for off-loading vessels.

(I) Loading racks, transfer hoses, loading arms and other equipment which are appurtenant to a non-transportation-related facility or terminal facility and which are used to transfer oil in bulk to or from highway vehicles or railroad cars.

(J) Highway vehicles and railroad cars which are used for the transport of oil exclusively within the confines of a non-transportation-related facility and which are not intended to transport oil in interstate or intrastate commerce.

(K) Pipeline systems which are used for the transport of oil exclusively within the confines of a non-transportation-related facility or terminal facility and which are not intended to transport oil in interstate or intrastate commerce, but excluding pipeline systems used to transfer oil in bulk to or from a vessel.

(2) *Transportation-related onshore and offshore facilities* means:

(A) Onshore and offshore terminal facilities including transfer hoses, loading arms and other equipment and appurtenances used for the purpose of handling or transferring oil in bulk to or from a vessel as well as storage tanks and appurtenances for the reception of oily ballast water or tank washings from vessels, but excluding terminal waste treatment facilities and terminal oil storage facilities.

(B) Transfer hoses, loading arms and other equipment appurtenant to a non-transportation-related facility which is used to transfer oil in bulk to or from a vessel.

(C) Interstate and intrastate onshore and offshore pipeline systems including pumps and appurtenances related thereto as well as in-line or breakout storage tanks needed for the continuous operation of a pipeline system, and pipelines from onshore and offshore oil production facilities, but excluding onshore and offshore piping from wellheads to oil separators and pipelines which are used for the transport of oil exclusively within the confines of a non-transportation-related facility or terminal facility and which are not intended to transport oil in interstate or intrastate commerce or to transfer oil in bulk to or from a vessel.

(D) Highway vehicles and railroad cars which are used for the transport of oil in interstate or intrastate commerce and the equipment and appurtenances related thereto, and equipment used for the fueling of locomotive units, as well as the rights-of-way on which they operate. Excluded are highway vehicles and railroad cars and motive power used exclusively within the confines of a non-transportation-related facility or terminal facility and which are not intended for use in interstate or intrastate commerce.

BILLING CODE 6560-50-M

APPENDIX B

NOTIFICATION FOR OIL STORAGE TANKS

FORM APPROVED
OMB NO. XXXX-XXXX
APPROVAL EXPIRES: DATE

Public reporting burden for this collection of information is estimated to vary from 30 minutes to 2 hours per response, with an average of 36 minutes per response. This estimate includes time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

GENERAL INFORMATION

How To Complete This Form?

This form is intended to be computer readable. To complete this form, entirely fill in the desired circle in black or blue ink, and please do not fold, spindle, or mutilate this form. To keep from folding this form, please return it in a 9"x12" envelope.

What Facilities Are Included?

All non-transportation-related facilities subject to EPA jurisdiction under the Clean Water Act (CWA) that have aboveground tanks with a combined capacity exceeding 1,320 gallons or 660 gallons in a single tank are included. Facilities owned by Federal, State, and local governments, other public agencies, and private entities are required to provide this notification.

Who Must Notify?

Owners or operators of non-transportation- related facilities.

What Are The Navigable Waters Of The U.S.?

For purposes of this notification, information on the distance to navigable waters is requested. The term "navigable waters of the United States" is broadly defined to include not only waters that may be used for commerce, but also any interstate waters or those intrastate waters that are related to interstate or foreign commerce. See 40 CFR 112.2.

What Substances Are Covered?

The notification requirements apply to aboveground storage tanks that have the capacity to store oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with wastes other than dredged spoil, and vegetable oils.

What Are Aboveground Tanks?

For the purposes of this notification, only information on the aboveground tanks at the facility is requested. An aboveground tank means any tank not completely covered with earth. Aboveground storage tanks include bunkered or partially buried tanks, or tanks that are in a subterranean vault.

Who To Call With Questions?

The SPCC Information Line at (202) 260-2342, or the RCRA/Superfund Hotline at 1-800-424-9346. The Telecommunications Device for the Deaf (TTD) Hotline number is 1-800-553-7672 (in the Washington, DC, metropolitan area, 202-475-9652).

What Are The SIC Codes?

Common SIC codes for facilities submitting this form include:

Farms - Crops	01
Farms - Livestock	02
Oil & Gas Extraction	13
Petroleum Bulk Stations and Terminals	571
Gasoline Service Stations	554
Colleges	882
Fuel Oil Dealers	5983
Stone, Clay, Glass, and Concrete Manufacturing	32
Chemical and Allied Products	28
Coal Mining	12
Nonmetallic Minerals Mining	14
Trucking and Warehousing	42
Water Transportation Services	446
Electric Utility Plants	491
Air Transportation	458

When To Notify?

All owners or operators currently operating facilities must complete and return this notification form to EPA by two months after promulgation of the final rule. All owners or operators of facilities that become operational after [insert date of final rule publication] must return the required notification before beginning facility operations.

Are There Any Penalties?

Any owner or operator who fails to notify or knowingly submits false information shall be subject to a civil penalty of not more than $5000 for each day such violation continues.

Where To Send Notifications?

Completed notification forms should be sent to:

SPCC Program
U.S. Environmental Protection Agency
OS-210
401 M Street, SW
Washington, D.C. 20460

I. FACILITY INFORMATION

Please type or print the information below.

OWNER/OPERATOR OF FACILITY:

NAME OF INDIVIDUAL OR COMPANY

LOCATION OF FACILITY (not corporate headquarters):

FACILITY NAME

ADDRESS

CITY ST ZIP CODE

PHONE NUMBER

DUN & BRADSTREET NUMBER

Enter the Dun & Bradstreet D-U-N-S number for the facility here, if available. If not available, write NA.

PRIMARY STANDARD INDUSTRIAL CLASSIFICATION

Enter the primary Standard Industrial Classification (SIC) number, if applicable. Common SIC codes are listed under general information. If not applicable, write NA.

-continued on reverse side-

Owner/Operator Name (from Section I):

II. SIZE AND NUMBER OF ABOVEGROUND OIL STORAGE TANKS

Write the number of tanks in the boxes and fill in the appropriate circles indicating the total number of aboveground oil storage tanks at your facility in each size category, including seasonally inactive tanks.

EXAMPLE

Number of Aboveground Tanks 1,001-2000 Gallons		
0	3	1
●	○	○
①	①	●
②	②	②
③	●	③
④	④	④

Number of Aboveground Tanks 250-1,000 Gallons		
○	○	○
①	①	①
②	②	②
③	③	③
④	④	④
⑤	⑤	⑤
⑥	⑥	⑥
⑦	⑦	⑦
⑧	⑧	⑧
⑨	⑨	⑨

Number of Aboveground Tanks 1,001-2,000 Gallons		
○	○	○
①	①	①
②	②	②
③	③	③
④	④	④
⑤	⑤	⑤
⑥	⑥	⑥
⑦	⑦	⑦
⑧	⑧	⑧
⑨	⑨	⑨

Number of Aboveground Tanks 2,001-10,000 Gallons		
○	○	○
①	①	①
②	②	②
③	③	③
④	④	④
⑤	⑤	⑤
⑥	⑥	⑥
⑦	⑦	⑦
⑧	⑧	⑧
⑨	⑨	⑨

Number of Aboveground Tanks 10,001-42,000 Gallons		
○	○	○
①	①	①
②	②	②
③	③	③
④	④	④
⑤	⑤	⑤
⑥	⑥	⑥
⑦	⑦	⑦
⑧	⑧	⑧
⑨	⑨	⑨

Number of Aboveground Tanks 42,001-250,000 Gallons		
○	○	○
①	①	①
②	②	②
③	③	③
④	④	④
⑤	⑤	⑤
⑥	⑥	⑥
⑦	⑦	⑦
⑧	⑧	⑧
⑨	⑨	⑨

Number of Aboveground Tanks 250,001-1,000,000 Gallons		
○	○	○
①	①	①
②	②	②
③	③	③
④	④	④
⑤	⑤	⑤
⑥	⑥	⑥
⑦	⑦	⑦
⑧	⑧	⑧
⑨	⑨	⑨

Number of Aboveground Tanks 1,000,001-4,000,000 Gallons		
○	○	○
①	①	①
②	②	②
③	③	③
④	④	④
⑤	⑤	⑤
⑥	⑥	⑥
⑦	⑦	⑦
⑧	⑧	⑧
⑨	⑨	⑨

Number of Aboveground Tanks over 4,000,000 Gallons		
○	○	○
①	①	①
②	②	②
③	③	③
④	④	④
⑤	⑤	⑤
⑥	⑥	⑥
⑦	⑦	⑦
⑧	⑧	⑧
⑨	⑨	⑨

III. FACILITY ABOVEGROUND OIL STORAGE CAPACITY

Fill in the appropriate circle indicating the total storage capacity of all aboveground oil storage tanks at your facility. Include the capacity of seasonally inactive tanks. If tanks are only partially filled, enter the sum of the maximum rated capacities for all tanks.

① 661-2,000 gallons
② 2,001 - 10,000 gallons
③ 10,001 - 42,000 gallons
④ 42,001 - 100,000 gallons
⑤ 100,001 - 250,000 gallons
⑥ 250,001 - 1,000,000 gallons
⑦ 1,000,001 - 5,000,000 gallons
⑧ 5,000,001 - 10,000,000 gallons
⑨ more than 10,000,000 gallons

IV. DISTANCE TO NAVIGABLE WATERS

Fill in the circle indicating the facility's distance to navigable waters of the U.S. Use the part of the facility closest to the nearest navigable waters to calculate the distance.

① Less than 500 feet
② 500-2,640 feet
③ 2,641 feet - 1 mile
④ 1-2 miles
⑤ 2-4 miles
⑥ 4-10 miles
⑦ more than 10 miles

V. CERTIFICATION

(Read and sign after completing all sections)

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

Name (please type or print)

Title

Signature

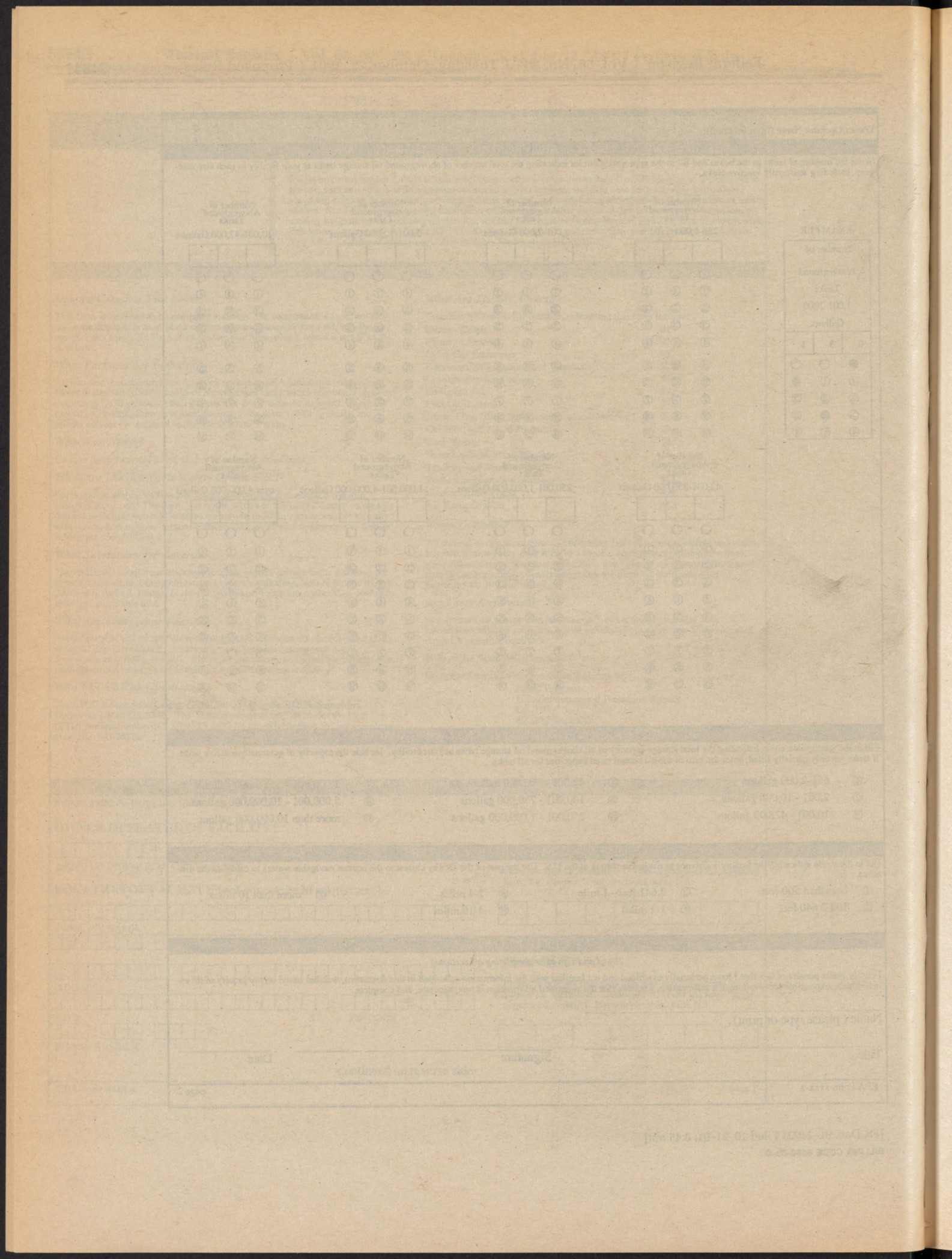
Date

EPA Form xxxx-x

page 2

[FR Doc. 91-24903 Filed 10-21-91; 8:45 am]

BILLING CODE 6560-50-C



federal register

Tuesday
October 22, 1991

Part III

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

October 1, 1991.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status, as of October 1, 1991, of seven deferrals contained in the first special message for FY 1992. This message was transmitted to Congress on September 30, 1991.

Rescissions

As of October 1, 1991, there are no FY 1992 rescissions pending before the Congress. One FY 1991 rescission of $5 million (R91–30) is pending before the Congress and the funds are currently being withheld.

Deferrals (Table A and Attachment A)

As of October 1, 1991, $1,817.0 million in budget authority was being deferred from obligation. Attachment A shows the history and status of each deferral reported during FY 1992.

Information from Special Message

The special message containing information on deferrals that is covered by this cumulative report is printed in the **Federal Register** cited below:

56 FR 50620, Monday, October 7, 1991

Richard Darman,

Director.

BILLING CODE 3110–01–M

TABLE A

STATUS OF FY 1992 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	1,817.0
Routine Executive releases through October 1, 1991	---
Overturned by the Congress.....	---
Currently before the Congress.....	1,817.0

Attachments

ATTACHMENT A
Status of FY 1992 Deferrals – As of October 1, 1991
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(–): Cumulative OMB/Agency	Releases(–): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 10–1–91
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D92–1	244,777		09–30–91					244,777
Agency for International Development									
International disaster assistance, Executive	D92–2	40,704		09–30–91					40,704
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D92–3	482,378		09–30–91					482,378
DEPARTMENT OF DEFENSE – CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D92–4	1,416		09–30–91					1,416

ATTACHMENT A
Status of FY 1992 Deferrals – As of October 1, 1991
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 10-1-91
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D92-5	7,317		09-30-91					7,317
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive	D92-6	30,053		09-30-91					30,053
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund)	D92-7	1,010,375		09-30-91					1,010,375
TOTAL, DEFERRALS		1,817,020	0		0	0		0	1,817,020

[FR Doc. 91-25226 Filed 10-21-91; 8:45 am]
BILLING CODE 3110-01-C

DEPARTMENT OF HUMAN SERVICES

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) is amended to reflect changes in the Social Security Administration (SSA).

Section SA.10 Organization is amended to reflect the abolishment of the Office of Program Benefits Policy and the establishment of the Office of Disability and Income Security Programs.

Section SA.20 Functions is amended to reflect the abolishment of the Office of Program Benefits Policy and the establishment of the Office of Disability and Income Security Programs.

Section SA.10 Organization

Under the Deputy Commissioner for Programs and Policy, delete the Office of Program Benefits Policy (SAC) in its entirety and add the Office of Disability and Income Security Programs (SAC) as follows:

Office of Disability and Income Security Programs (SAC)

Section SA.20 Functions

Delete the Office of Program Benefits Policy (SAC) in its entirety and add the Office of Disability and Income Security Programs (SAC) as follows:

Office of Disability and Income Security Programs (SAC)

Provides leadership and direction for the development of policies and programs for the disability insurance, supplemental security income, and black lung programs; develops policies and programs for the coordination of SSA programs with other Federal, State, and private programs; develops policies and programs for the coordination of SSA programs with vocational rehabilitation programs; develops policies and programs for the coordination of SSA programs with medical programs; develops policies and programs for the coordination of SSA programs with social service programs; develops policies and programs for the coordination of SSA programs with employment programs; develops policies and programs for the coordination of SSA programs with housing programs; develops policies and programs for the coordination of SSA programs with transportation programs; develops policies and programs for the coordination of SSA programs with education programs; develops policies and programs for the coordination of SSA programs with training programs; develops policies and programs for the coordination of SSA programs with research programs; develops policies and programs for the coordination of SSA programs with evaluation programs; develops policies and programs for the coordination of SSA programs with planning programs; develops policies and programs for the coordination of SSA programs with budgeting programs; develops policies and programs for the coordination of SSA programs with accounting programs; develops policies and programs for the coordination of SSA programs with auditing programs; develops policies and programs for the coordination of SSA programs with personnel programs; develops policies and programs for the coordination of SSA programs with procurement programs; develops policies and programs for the coordination of SSA programs with property management programs; develops policies and programs for the coordination of SSA programs with information resources management programs; develops policies and programs for the coordination of SSA programs with public affairs programs; develops policies and programs for the coordination of SSA programs with legislative programs; develops policies and programs for the coordination of SSA programs with regulatory programs; develops policies and programs for the coordination of SSA programs with international programs; develops policies and programs for the coordination of SSA programs with intergovernmental programs; develops policies and programs for the coordination of SSA programs with private sector programs; develops policies and programs for the coordination of SSA programs with volunteer programs; develops policies and programs for the coordination of SSA programs with minority programs; develops policies and programs for the coordination of SSA programs with women's programs; develops policies and programs for the coordination of SSA programs with aging programs; develops policies and programs for the coordination of SSA programs with youth programs; develops policies and programs for the coordination of SSA programs with children's programs; develops policies and programs for the coordination of SSA programs with family programs; develops policies and programs for the coordination of SSA programs with community programs; develops policies and programs for the coordination of SSA programs with neighborhood programs; develops policies and programs for the coordination of SSA programs with rural programs; develops policies and programs for the coordination of SSA programs with urban programs; develops policies and programs for the coordination of SSA programs with suburban programs; develops policies and programs for the coordination of SSA programs with metropolitan programs; develops policies and programs for the coordination of SSA programs with regional programs; develops policies and programs for the coordination of SSA programs with national programs; develops policies and programs for the coordination of SSA programs with international programs.

Dated: October 17, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-24762 Filed 10-22-90; 8:45 am]

BILLING CODE 4160-17-M

federal register

Tuesday
October 22, 1991

Part IV

Department of Education

34 CFR Part 208

Eisenhower Mathematics and Science Education; State Grant Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 208

RIN 1810-AA40

Eisenhower Mathematics and Science Education—State Grant Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Eisenhower Mathematics and Science Education—State Grant Program. These proposed regulations would implement the changes resulting from amendments enacted in Title II, Part A, of the Excellence in Mathematics, Science and Engineering Education Act of 1990, and make several technical changes, including a change in the formula for allocating funds to local educational agencies (LEAs).

DATES: Comments must be received on or before November 21, 1991.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Lee E. Wickline, Director, School Effectiveness Division, U.S. Department of Education, Mail Stop 6439, 400 Maryland Avenue, SW., Washington, DC 20202. A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Doris Crudup, Mathematics and Science Education Programs Branch, 400 Maryland Avenue, SW., (room 2040, FOB #6), Washington, DC 20202, (202) 401-1062. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington DC area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The national education goals and the America 2000 strategy form a context for understanding these regulations. These goals call for an improvement in school readiness, an increase in the high school graduation rate, improved achievement in certain core subjects, preparation for employment or further education for high school graduates, responsible citizenship, an improved learning environment, and reduced violence and use of drugs in schools. The strategy is designed to move the country in the direction of achieving these goals.

The Dwight D. Eisenhower Mathematics and Science Education Act is authorized by Title II, Part A, of the Elementary and Secondary Education Act of 1965. After the program was reauthorized by the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297), the Secretary published regulations for this program in the **Federal Register** on August 10, 1989 (54 FR 32936). On November 16, 1990, the President signed into law the Excellence in Mathematics, Science and Engineering Education Act of 1990 (Pub. L. 101-589), which made several changes to the Eisenhower Act. The Secretary proposes to amend the regulations in 34 CFR Part 208 to implement those changes and several others that would promote more effective use of program funds.

Effective Teacher Training Programs

In §§ 208.11, 208.22, and 208.32, the Secretary proposes to require that State, LEA, and institution of higher education (IHE) applications describe how those agencies will ensure that training programs will be of high quality and of sufficient duration and intensity to have a lasting effect on the improvement of teacher performance and student learning. While the Secretary is not proposing to require that activities be of any particular level of intensity or duration, these provisions encourage grantees to use Eisenhower Act funds for more effective programs as discussed by SRI, International in its February, 1991 study of the Eisenhower Program. In that report, SRI noted that professional development activities are most effective if they (1) are related to long term improvement goals, (2) are of sufficient intensity to allow for integration into understanding and implementation, (3) are related to classroom assignments, (4) include professional teams (rather than individuals) that can work with each other over time, (5) have follow-up activities or reinforcement activities or both, and (6) have the administrative and policy support of the school or LEA. While implementation of these provisions could result in the training of fewer teachers than is now the case, the Secretary believes that the SRI findings are sound guidelines that States, LEAs, and IHEs should use in developing their professional training strategies.

The Secretary is considering modifying requirements for the annual performance report so that the report will contain more useful information from States on the intensity, duration, and overall quality of programs supported with Eisenhower Act funds.

Emphasis on Training in Elementary and Middle Schools

Section 202 of the 1990 amendments requires that all Eisenhower Act funds received by each LEA in excess of the amount received from the fiscal year 1990 appropriation be used to provide training for mathematics and science teachers in elementary and middle schools. The amendments also permit the Secretary to waive this requirement for any LEA that demonstrates that the mathematics and science teachers under its jurisdiction will receive adequate training without use of these funds.

The purpose of these provisions is to ensure that teachers at the elementary and middle school levels receive first priority for training. Strictly read, however, the statute requires that only the increase over an LEA's 1990 allocation must be used for teacher training at the elementary and middle school levels, leaving open the possibility that districts could actually decrease the total amount spent on training at those levels so long as at least an amount equivalent to the increase is used. Since this would give the provision little practical value, and would appear to be inconsistent with its purpose, the Department proposes to require in § 208.24(a) that, unless waived, the amount of Eisenhower Act funds each LEA must expend on training for elementary and middle school mathematics and science teachers must equal at least the total of (1) those funds expended for training of elementary and middle school teachers out of funds it received from the fiscal year 1990 Eisenhower Act appropriation, and (2) the amount the LEA receives each year that is in excess of the allocation it received from the fiscal year 1990 appropriation.

Section 208.24(b) would permit the Secretary to waive this requirement, in whole or in part. Sections 208.24 (c) and (d) would establish a process and criteria that the Secretary would use to determine whether an LEA's elementary and middle school mathematics and science teachers would receive adequate training without expending the levels required by § 208.24(a). The LEA's waiver request would be transmitted to the Secretary through the SEA, so that the SEA can review and comment on the information that the LEA provides. The Secretary believes that this SEA review procedure is appropriate in view of the SEA's requirement to determine annually that an LEA is making progress toward meeting the goals of this program before awarding the LEA new Eisenhower Act funds, and the

requirement that LEA activities be consistent with the Statewide assessment of teacher training needs.

Proposed § 208.24(c) describes the information the Secretary will consider in reviewing any request for a waiver. This information would include: numbers and percentages of the LEA's elementary and middle school mathematics and science teachers who would be involved in the LEA's Eisenhower training; the intensity and content of that training; the amount of the LEA's total Eisenhower Act allocation the LEA proposes to use for training of elementary and middle school mathematics and science teachers; how the proposed training activities are consistent with the Statewide assessment of need; how the training needs of these teachers will be met from other sources of funds; and other relevant information provided by the LEA or SEA. Under § 208.24(e), the provisions of paragraphs (a), (b), and (c) would have no effect for any LEA that either (1) serves an area in which there are no elementary or middle school teachers, or (2) receives an allocation of Eisenhower Act funds that is less than the amount it received for use from the fiscal year 1990 appropriation.

The proposed regulations address only the use of funds by the LEA; however, the emphasis that Congress has placed on teacher training at the elementary and middle school levels should impact on the entire Statewide program. In keeping with the overriding responsibility of both the SEA and the State Agency for Higher Education (SAHE) to plan and support projects on the basis of a Statewide assessment of the current curriculum needs throughout the State, the Secretary expects both the SEA and SAHE to consider the evident need for greater attention to training at these levels in the use of all funds reserved for the State and in any grants they award with Eisenhower Act funds.

Formation of Consortia

Consistent with section 201 of the 1990 statute, § 208.22(d) would be revised to require that, unless waived by the SEA, any LEA that receives an Eisenhower Act allocation of less than $6,000 must form a consortium with at least one other LEA or with an IHE that has received either a grant from the SEA to operate a demonstration and exemplary program under § 208.24 or a competitive grant from the SAHE under § 208.31(a). This provision would further require that each consortium be comprised of LEAs or IHEs whose collective Eisenhower Act funds total at least $6,000. The purpose of this requirement is to guarantee that these funds will be pooled to attain the mass critical for creating and implementing effective local programs. Section 208.22(e) would authorize the SEA to waive this requirement in whole or in part for any LEA in its State that demonstrates that its program is of sufficient size, scope, and quality to be effective. As the statute provides, in granting waivers, the SEA would be required to give special consideration to LEAs serving rural areas and consider cash or in-kind contributions provided from State or local sources that may be combined with the LEA's allocation for the purpose of providing authorized services.

Funds Reserved for Administration, Technical Assistance, and Assessment

Sections 208.21(c) and 208.31(b) of the proposed regulations would be amended to reflect the statutory changes that allow both the SEA and the SAHE to reserve up to the greater of $20,000 or five percent of the funds allotted to them for administration, technical assistance, and assessment. Technical changes would also be made in § 208.21(a) and § 208.31(a)(1) to reflect the new levels of funds that are available to be distributed to LEAs and IHEs.

Corrections to Existing Regulations

Section 208.21(a)(2) of the existing regulations provides that, of the funds the SEA is to distribute to the LEAs for elementary and secondary education programs and activities, 50 percent is to be distributed to LEAs in the same proportion as funds they receive under Part A of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965. As revised, § 208.21(a)(2) would reflect more precisely the statutory requirement in section 2005(a)(2)(B) of the Eisenhower Act that these funds be distributed in proportion to the funds the LEA receives under the Chapter 1 Basic Grant Program for LEAs. (See 34 CFR §§ 200.22–200.24.)

In addition, the existing regulations would be modified (1) to correct errors in the regulatory provisions referenced in § 208.11(b)(2)(viii), concerning the submission of summaries of local assessments to the Secretary, and § 208.32, concerning the use of funds to implement cooperative projects, and (2) to delete the regulations in 34 CFR part 74 as applicable to this program. Provisions of part 74 concern only grants that the Department makes directly to institutions of higher education, hospitals, and nonprofit organizations, not subgrants that State agencies may make to these entities.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small LEAs receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small LEAs affected because they would impose minimal requirements to ensure the proper expenditure of program funds and would not impose excessive regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1980

Sections 208.11, 208.22 and 208.24(b) contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504 (h))

Local educational agencies will need to apply to the Secretary to waive the requirement to expend funds that are in excess of those received from the FY 1990 appropriation for training of elementary and middle school mathematics and science teachers. The application will be transmitted through the SEA for its comment and additional information. The Department will need this information to determine if these teachers will receive adequate training without the use of these additional funds; i.e., to determine if the Secretary should grant a waiver.

Annual public reporting burden is estimated to be eight hours per response for 10 respondents per State, including LEA time for searching existing sources and gathering needed data, as well as SEA review and comment.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, OMB, New Executive Office Building, Washington, DC 20503. Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372

and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. The Secretary is particularly interested in receiving comments on proposed § 208.22 (d) and (e).

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 2040, FOB #6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 208

Colleges and universities, Consortium, Economically disadvantaged, Education, Elementary and secondary education, Gifted and talented, Grants administration, Grant programs—education, Inservice education, Low-income families, Mathematics, Museums, Nonprofit educational organization, Other appropriate educational personnel, Preservice education, Private schools, Recruitment and retention, Reporting and recordkeeping requirements, Retraining, Science and technology, State administered programs, Students, Teachers, Training program, Underserved and underrepresented, Vocational education.

Dated: August 30, 1991.

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.164, The Dwight D. Eisenhower Mathematics and Science Education Act.)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations as follows:

PART 208—EISENHOWER MATHEMATICS AND SCIENCE EDUCATION PROGRAM—STATE GRANTS

The authority citation for part 208 continues to read as follows:

Authority: 20 U.S.C. 2891–2993, unless otherwise noted.

§ 208.2 [Amended]

2. Section 208.2(b) is amended by removing the phrase "Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Non-profit Organizations),".

§ 208.11 [Amended]

3. Section 208.11(b)(2)(viii) is amended by removing "208.22(b)(1)", and by adding in its p1ace "208.22(b)(3)(ii)".

4. Section 208.11 is amended by redesignating paragraphs (b)(3) (iv) through (vi) as (v) through (vii) and adding a new paragraph (b)(3)(iv) to read as follows:

§ 208.11 State application.

* * * * *

(b) * * *

(3) * * *

(iv) Specific activities that will be undertaken to ensure that all teacher training programs and other activities are of high quality and of sufficient duration to have a lasting and positive effect on teacher performance.

§ 208.21 [Amended]

* * * * *

5. Section 208.21 is amended by adding ", or the remainder after application of paragraph (c) of this section" after "§ 208.11(a)" in paragraph (a), adding "under the Basic Grants for LEAs" after the words "proportion as funds" in paragraph (a)(2), and by adding "$20,000 or" after the words "more than", and "whichever is greater," after "§ 208.11(a)" in paragraph (c).

6. Section 208.22 is amended by removing the word "and" from the end of paragraph (b)(2)(ii), and by adding the following new paragraph (b)(2)(iv):

§ 208.22 LEA application.

* * * * *

(b) * * *

(2) * * *

(iv) How the LEA plans to ensure that all teacher training programs and other activities are of high quality and of sufficient duration to have a lasting and positive effect on teacher performance; and

* * * * *

7. Section 208.22 is further amended by redesignating paragraph (d) as (f) and adding the following new paragraphs (d) and (e):

* * * * *

(d) Notwithstanding paragraph (b) of this section, an LEA whose allocation of funds under § 208.21(a) totals less than $6,000 must describe in its application how it will form a consortium with at least one other LEA receiving assistance under § 208.21(a) or IHE receiving assistance under §§ 208.24 or 208.31(c) to carry out activities funded under this part. The consortium must be comprised of LEAs and IHEs whose combined Eisenhower Act funds under this part total at least $6,000.

(e) The provisions of paragraph (d) of this section must be waived by the SEA in the case of any LEA that demonstrates that the amount of its allocation is sufficient to provide a program of sufficient size, scope, and quality to be effective. In making this determination the SEA shall use criteria that include—

(1) Special consideration for LEAs serving rural areas; and

(2) Consideration for cash or in-kind contributions provided from State or local sources that may be combined with the LEA allocation for the purpose of providing services under this part.

* * * * *

§§ 208.24 and 208.25 [Redesignated]

8. Section 208.25 is redesignated as § 208.26 and § 208.24 is redesignated as § 208.25.

9. A new § 208.24 is added to read as follows:

§ 208.24 Special provisions for use of LEA funds.

(a) From each allocation of funds it receives under § 208.21(a) after September 30, 1990, each LEA shall expend for training elementary and middle school mathematics and science teachers an amount that is not less than the total of—

(1) The excess of that allocation over the allocation received for use from the fiscal year 1990 appropriation; and

(2) The amount expended for this training from the allocation of funds received under this part from the fiscal year 1990 appropriation, based on available information.

(b) The Secretary may waive the provisions of paragraph (a) of this section, in whole or in part, in the case of any LEA that demonstrates that mathematics and science teachers in its elementary and middle schools will receive adequate training with the use of lesser amounts of funds provided under this part.

(c) Any LEA requesting a waiver of the requirements in paragraph (a) of this section shall submit to the Secretary, through its SEA, a description of its plan for training elementary and middle school mathematics and science teachers. This description must include, but is not limited to—

(1) The number and proportion of elementary and middle school mathematics and science teachers in the area served by the LEA who will be involved in all training provided by the LEA;

(2) A description of the training to be provided to these elementary and middle school teachers and how this training will satisfy the needs of these teachers and reflect appropriate mathematics and science teaching methodology or content;

(3) The average number of hours of training in mathematics and science planned per elementary and middle school teacher;

(4) The amount of the LEA allocation under this part that, if a waiver is granted, will be used for training of mathematics and science teachers in elementary and middle schools;

(5) How the training needs of these teachers will be met, in whole or in part, from other sources of funds; and

(6) How the activities the LEA would conduct under this part at the elementary and middle school levels are consistent with—

(i) The Statewide assessment of need described in § 208.11(b)(4) (State application); and

(ii) Any criteria that the SEA has established for training of elementary and middle school mathematics and science teachers.

(d) The SEA shall forward to the Secretary any waiver requests submitted under paragraph (b) of this section with any other information that it believes is relevant.

(e) The provisions of paragraphs (a) through (c) of this section do not apply in the case of any LEA that—

(1) Serves an area in which there are no elementary or middle school teachers; or

(2) Receives an allocation of funds under this part that is less than the amount it received from the fiscal year 1990 appropriation.

§ 208.31 [Amended]

10. Section 208.31 is amended by adding "or the remainder after application of paragraph (b) of this section" after "§ 208.11(a)" in paragraph (a)(1), and by adding "$20,000 or" after "more than" and ", whichever is greater," after "§ 208.11" in paragraph (b).

11. Section 208.32 is revised to read as follows:

§ 208.32 State application.

(a) An IHE wishing to receive a grant for programs funded under the Act may apply to the SAHE on a competitive basis either as an individual subgrantee or on behalf of a proposed cooperative program (see § 208.31(a)(3)).

(b) The application must—

(1) Provide evidence that the training activities it proposes to implement are of high quality and sufficient duration to have a lasting and positive effect on teacher performance;

(2) Demonstrate the IHE's involvement with one or more LEAs as required by § 208.33(d); and

(3) Contain other information that the SAHE may require.

(Authority: 20 U.S.C. 2987)

[FR Doc. 91–25191 Filed 10–21–91; 8:45 am]

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Tuesday
October 22, 1991

Part V

State Justice Institute

Grant Guideline; Notice

STATE JUSTICE INSTITUTE

Grant Guideline

AGENCY: State Justice Institute.

ACTION: Final grant guideline.

SUMMARY: This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 1992 State Justice Institute grants, cooperative agreements, and contracts.

DATES: October 22, 1991.

FOR FURTHER INFORMATION CONTACT: David I. Tevelin, Executive Director, or Richard Van Duizend, Deputy Director, at State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314, or at (703) 684–6100.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, et seq., as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the administration of justice in the State courts of the United States. Approximately $11–12 million is expected to be available for award in FY 1992.

Funding Schedule

The FY 1992 concept paper deadline is December 4, 1991. Papers must be postmarked or bear other evidence of submission by that date. With two exceptions noted immediately below, the FY 1992 funding cycle will be substantially similar to the FY 1991 cycle: the Board will meet in early March, 1992 to invite formal applications based on the most promising concept papers; applications will be due in May; and awards will be approved by the Board in July.

The exceptions to this schedule are proposals to convene a National Conference on Family Violence and the Courts and proposals to follow up on the National Conference on Substance Abuse and the Courts to be held this November.

With respect to the National Conference on Family Violence and the Courts, the Board of Directors has approved an accelerated schedule in order to bring important Institute-supported research findings and other information bearing on this critical issue to the attention of the courts as soon as possible. As set forth in section II.B.2.b.iv. of the Proposed Guideline, concept papers proposing to conduct the conference are to be sent to SJI no later than October 30, 1991. The Board will invite applications at its November 21–24, 1991 meeting, and make grant decisions at its March 5–8, 1992 meeting.

With respect to the Substance Abuse Conference followup, the Board has established a second concept paper deadline of March 1, 1992 to afford those attending the conference an early opportunity to obtain grant support for post-conference implementation activities.

Concept Papers

The format for concept papers has been simplified by reducing the amount of information called for and by the development of a preliminary budget form (see Appendix IV). The maximum number of pages permitted in a concept paper has accordingly been reduced from ten to eight (see section VI.). The Board of Directors wishes to emphasize that concept papers are expected to present only a sound concept of a promising project to improve the administration of justice in the State courts. Applicants will have the opportunity to show how their concepts would actually work in their formal applications.

The Board has also approved a procedure by which concept papers requesting less than $40,000 to conduct important court-related legal research or planning activities could be approved for funding on the basis of the concept paper alone. See section VI.C.

Comments on the Proposed Guideline

On September 3, 1991, the Institute published its proposed FY 1992 Grant Guideline in the **Federal Register** for public comment. 56 FR 43652. The comments received and the Institute's response to them are set forth below:

Special Interest Categories

One comment encouraged the Institute to retain the "Responding to the Court-Related Needs of Victims of Crime and Witnesses" Special Interest category that had appeared in prior years' Grant Guidelines. In light of the small number of high quality proposals that have been submitted to the Institute in this category over the past several years, the category has not been retained in the Final Guideline. The Institute wishes to emphasize, however, that it will continue to be receptive to important innovations in this area. The solicitation of proposals for the Family Violence Conference noted above reflects the Board's continuing interest in this area.

Judicial Education Scholarships

Two comments were received about the Institute's experimental $100,000 judicial education scholarship program. One comment urged the Institute to consider the comparable benefits of supporting scholarships for individual judges as opposed to developing national scope training programs. Another commenter opposed the program on three grounds: (1) It reinforces the perception that SJI gives the interests of national judicial education providers more consideration than the needs of local and State court systems; (2) the experiment will not meet its objectives of determining the national demand for scholarships or SJI's ability to provide meaningful support for out-of-State education; and (3) the administrative burdens that will fall upon a State Administrative Office of the Courts (AOC) will outweigh the benefits to be provided by one scholarship.

With respect to the first comment, SJI concurs that an analysis of the type suggested should be part of the evaluation of the experimental program. With respect to the second comment, the Institute believes that, in both its program initiatives and its grant awards, it has demonstrated a strong commitment to the development of in-State judicial education. It also believes that the data to be collected by SJI should provide a sufficient basis for deciding whether to continue the program in future years. Finally, although the burdens on an AOC might be disproportionate to the benefits accruing from one scholarship in the first year of the experiment, those burdens would undoubtedly decrease over time, and benefits increase from an expansion of the program in later years. The program has, accordingly, been retained in the final Guideline.

Products

One comment raised a number of questions regarding the interpretation and application of the Guideline's new provisions pertaining to Institute approval of grant products, and the use of the Institute logo. Although none of the questions raised warranted a change in the Guideline, they did identify issues on which SJI policy and practices will need to be developed. Grantees will be kept informed of the Institute's decisions in those areas.

Renewal Funding

The proposed Guideline noted that the Board of Directors had established a target for renewal grants (including both continuation and on-going support grants) of no more than 25% of the amount available for grants in FY 1992. One organization commented that it is engaged in on-going programs of direct

service and support to State courts that would be terminated or severely curtailed if SJI funding is withdrawn. The Board of Directors acknowledges that its on-going support grants support important services to the State courts for which there is a continuing need. As noted in the proposed Guideline, it also believes that in order to assure that significant funding is available for new projects promising innovative benefits for the State courts, it should not continue to spend 35–40% of its limited grant funds to support continuation projects. The Board will carefully consider the impact of a termination or reduction of a project in considering individual renewal applications. The 25% target is, however, retained in the final Guideline.

Technical changes, e.g., typographical corrections and cross-references, have been made in the final Guideline.

Recommendations to Grantwriters

Over the past three years, Institute staff have reviewed approximately 1,500 concept papers and over 500 applications. On the basis of those reviews, inquiries from applicants, and the views of the Board, the Institute offers the following recommendations to help potential applicants present workable, understandable proposals that can meet the funding criteria set forth in this Guideline.

The Institute suggests that applicants make certain that they address the questions and issues set forth below when preparing a concept paper or application. Concept papers and applications should, however, be presented in the formats specified in sections VI. and VII. of the Guideline, respectively.

1. *What is the subject or problem you wish to address?* Describe the subject or problem and how it affects the courts and the public. Discuss how your approach will improve the situation or advance the state of the art or knowledge, and explain why it is the most appropriate approach to take. When statistics or research findings are cited to support a statement or position, the source of the citation should be referenced in a footnote.

2. *What do you want to do?* Explain the goal(s) of the project in simple, straightforward terms. To the greatest extent possible, an applicant should avoid a specialized vocabulary that is not readily understood by the general public. Technical jargon does not enhance a paper.

3. *How will you do it?* Describe the methodology carefully so that what you propose to do and how you would do it is clear. All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks and relate those tasks directly to the accomplishment of the project's goal(s). When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, err on the side of caution and provide the additional information. A description of project tasks will also help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described. The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. *How will you know it works?* Every project design must include an evaluation component to determine whether the proposed training, procedure, service, or technology accomplished the objectives it was designed to meet. Concept papers and applications should describe the criteria that will be used to evaluate the project's effectiveness and identify program elements which will require further modification. The description in the application should include how the evaluation will be conducted, when it will occur during the project period, who will conduct it, and what specific measures will be used. In most instances, the evaluation should be conducted by persons not connected with the implementation of the procedure, training, service, or technique, or the administration of the project.

The Institute has also prepared a more thorough list of recommendations to grantwriters regarding the development of project evaluation plans. Those recommendations are available from the Institute upon request.

5. *How will others find out about it?* Every project design must include a plan to disseminate the results of the training, research, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods which will be used to inform the field about the project, such as the publication of law review or journal articles, presentations at appropriate conferences, or the distribution of key materials. A statement that a report or research findings "will be made available to" the field is not sufficient. The specific means of distribution or dissemination should be identified. Reproduction and dissemination costs are allowable budget items.

6. *What are the specific costs involved?* The budget in both concept papers and applications should be clearly presented. Major budget categories such as personnel, benefits, travel, supplies, equipment, and indirect costs should be clearly identified.

7. *What, if any, match is being offered?* Courts and other units of State and local government (not including publicly supported institutions of higher education) are required by the State Justice Institute Act, as amended, to contribute a match (cash, non-cash, or both) of not less than 50 percent of the grant funds requested from the Institute. All other applicants are also encouraged to provide a matching contribution to assist in meeting the costs of a project. The match requirement works as follows: if, for example, the total cost of a project is anticipated to be $150,000, a State or local court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as match.

Cash match includes funds directly contributed to the project by the applicant, or by other public or private sources. Non-cash match refers to in-kind contributions by the applicant, or other public or private sources. When match is offered, the nature of the match (cash or in-kind) should be explained and, at the application stage, the tasks and line items for which costs will be covered wholly or in part by match should be specified.

8. *Which of the two budget forms should be used?* Section VII.A.3. of the SJI Grant Guideline encourages use of the spreadsheet format of Form C1 if the funding request exceeds $100,000. Form C1 also works well for projects with discrete tasks, no matter what the dollar value of the project. Form C, the tabular format, is preferred for projects lacking a number of discrete tasks, or for projects requiring less than $100,000 of Institute funding. Generally, applicants should use the form that best lends itself to representing most accurately the budget estimates for the project.

9. *How much detail should be included in the budget narrative?* The budget narrative of an application should provide the basis for computing all project-related costs, as indicated in section VII.D. of the SJI Grant Guideline. To avoid common shortcomings of application budget narratives, the following information should be included:

- Personnel estimates that accurately provide the amount of time to be spent by personnel involved with the project

and the total associated costs, including current salaries for the designated personnel (e.g., Project Director, 50% for one year, annual salary of $30,000 = $15,000). If salary costs are computed using an hourly or daily rate, the annual salary and number of hours or days in a work-year should be shown.

• Estimates for supplies and expenses supported by a complete description of the supplies to be used, nature and extent of printing to be done, anticipated telephone charges, and other common expenditures, with the basis for computing the estimates included (e.g., 100 reports × 75 pages each × .05/page = $375.00).

Supply and expense estimates offered simply as "based on experience" are not sufficient.

In order to expedite Institute review of the budget, applicants should make a final comparison of the amounts listed in the budget narrative with those listed on the budget form. In the rush to complete all parts of the application on time, there may be many last-minute changes; unfortunately, when there are discrepancies between the budget narrative and the budget form or the amount listed on the application cover sheet, it is not possible for the Institute to verify the amount of the request. A final check of the numbers on the form against those in the narrative will preclude such confusion.

10. *What travel regulations apply to the budget estimates?* Transportation costs and per diem rates must comply with the policies of the applicant organization, and a copy of the applicant's travel policy should be submitted as an appendix to the application. If the applicant does not have a travel policy established in writing, then travel rates must be consistent with those established by the Institute or the Federal Government (a copy of the Institute's travel policy is available upon request). The budget narrative should state which regulations are in force for the project and should include the number of persons traveling, the number of trips to be taken, and the length of stay. The estimated costs of travel, lodging, and other subsistence should be listed separately. When combined, the subtotals for these categories should equal the estimate listed on the budget form.

11. *May grant funds be used to purchase equipment?* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the objectives of the project. The budget narrative must list such equipment and explain why the equipment is necessary. Written prior approval of the Institute is required when the amount of automated data processing equipment to be purchased or leased exceeds $10,000, or the software to be purchased exceeds $3,000.

12. *To what extent may indirect costs be included in the budget estimates?* It is the policy of the Institute that all costs should be budgeted directly; however, if an applicant has an indirect cost rate that has been approved by a Federal agency within the last two years, an indirect cost recovery estimate may be included in the budget. A copy of the approved rate agreement should be submitted as an appendix to the application. If an applicant does not have an approved rate agreement, an indirect cost rate proposal should be prepared in accordance with Section XI.H.4 of the Grant Guideline, based on the applicant's audited financial statements for the prior fiscal year (applicants lacking an audit must budget all project costs directly). If an indirect cost rate proposal is to be submitted, the budget should reflect estimates based on that proposal. Obviously, this requires that the proposal be completed for the applicant's use at the time of application so that the appropriate estimates may be included; however, grantees have until three months after the project start date to submit the indirect cost proposal to the Institute for approval.

13. *Does the budget truly reflect all costs required to complete the project?* After preparing the program narrative portion of the application, applicants may find it helpful to list all the major tasks or activities required by the proposed project, including the preparation of products, and note the individual expenses, including personnel time, related to each. This will help to ensure that, for all tasks described in the application (e.g., development of a videotape, research site visits, distribution of a final report), the related costs appear in the budget and are explained correctly in the budget narrative.

State Justice Institute Grant Guideline

The following Grant Guideline is accordingly adopted by the State Justice Institute for Fiscal Year 1992:

STATE JUSTICE INSTITUTE GRANT GUIDELINE

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Summary

This Guideline sets forth the programmatic, financial, and administrative requirements of grants, cooperative agreements, and contracts awarded by the State Justice Institute. The Institute, a private, nonprofit corporation established by an Act of Congress, is authorized to award grants, cooperative agreements and contracts to improve the administration and quality of justice in the State courts.

Grants may be awarded to State and local courts and their agencies; national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branch of State governments; national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments; other nonprofit organizations with expertise in judicial administration; institutions of higher education; individuals, partnerships, firms, or corporations; and private agencies with expertise in judicial administration if the objectives of the funded program can be better served by such an entity. Funds may also be awarded to Federal, State or local agencies and institutions other than courts for services that cannot be provided for adequately through nongovernmental arrangements.

It is anticipated that approximately $10–12 million will be available for grants, contracts, and cooperative agreements from FY 1992 appropriations. The Institute may also provide financial assistance in the form of interagency agreements with other grantors. The Institute will consider applications for funding support that address any of the areas specified in its enabling legislation; however, the Board of Directors of the Institute has designated certain program categories as being of special interest.

The Institute has established one round of competition for FY 1992 funds. The concept paper submission deadline

for all but two funding categories is December 4, 1991. Concept papers concerning the proposed National Conference on Family Violence and the Courts must be mailed by October 30, 1991. Concept papers on projects that follow up on the November 1991 National Conference on Substance Abuse and the Courts must be mailed by March 1, 1991. This Guideline applies to all concept papers and formal applications submitted for FY 1992 funding.

The awards made by the State Justice Institute are governed by the requirements of this Guideline and the authority conferred by Public Law 98–620, title II, 42 U.S.C. 10701, *et seq.*, as amended.

I. Background

The State Justice Institute ("Institute") was established by Public Law 98–620 to improve the administration of justice in the State courts in the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

A. Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;

B. Foster coordination and cooperation with the Federal judiciary;

C. Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

D. Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by an eleven-member Board of Directors appointed by the President, by and with the consent of the Senate. The Board is statutorily composed of six judges, a State court administrator, and four members of the public, no more than two of whom can be of the same political party.

The Institute's program budget for Fiscal Year 1992 is expected to be approximately $11–12 million. Through the award of grants, contracts, and cooperative agreements, the Institute is authorized to perform the following activities:

1. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

2. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

3. Participate in joint projects with Federal agencies and other private grantors;

4. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

5. Encourage and assist in furthering judicial education;

6. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

7. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

II. Scope of the Program

During FY 1992, the Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. The Board, however, has designated certain program categories as being of "special interest." See section II.B.

A. Authorized Program Areas

The State Justice Institute Act authorizes the Institute to fund projects addressing one or more of the following program areas:

1. Assistance to State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

2. Education and training programs for judges and other court personnel for the performance of their general duties and for specialized functions, and national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

3. Research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, implementation of demonstration programs to test such innovative approaches, and evaluations of their effectiveness;

4. Studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and support to States to implement plans for improved court organization and financing;

5. Support for State court planning and budgeting staffs and the provision of technical assistance in resource allocation and service forecasting techniques;

6. Studies of the adequacy of court management systems in State and local courts, and implementation and evaluation of innovative responses to records management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

7. Collection and compilation of statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;

8. Studies of the causes of trial and appellate court delay in resolving cases, and establishing and evaluating experimental programs for reducing case processing time;

9. Development and testing of methods for measuring the performance of judges and courts and experiments in the use of such measures to improve the functioning of judges and the courts;

10. Studies of court rules and procedures, discovery devices, and evidentiary standards to identify problems with the operation of such rules, procedures, devices, and standards; and the development of alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and testing of the utility of those alternative approaches;

11. Studies of the outcomes of cases in selected areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity; and the development, testing and evaluation of alternative approaches to resolving cases in such problem areas;

12. Support for programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

13. Testing and evaluating experimental approaches to provide increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms

for resolving disputes between citizens; and

14. Other programs, consistent with the purposes of the Act, as may be deemed appropriate by the Institute, including projects dealing with the relationship between Federal and State court systems in areas where there is concurrent State-Federal jurisdiction and where Federal courts, directly or indirectly, review State court proceedings.

Funds will not be made available for the ordinary, routine operation of court systems in any of these areas.

B. Special Interest Program Categories

1. General Description

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. Although applications in any of the statutory program areas are eligible for funding in FY 1992, the Institute is especially interested in funding those projects that:

a. Formulate new procedures and techniques, or creatively enhance existing arrangements to improve the courts;

b. Address aspects of the State judicial systems that are in special need of serious attention;

c. Have national significance in terms of their impact or replicability in that they develop products, services and techniques that may be used in other States;

d. Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a "Special Interest" project if it meets the four criteria set forth above and (1) it falls within the scope of the "special interest" program areas designated below, or (2) information coming to the attention of the Institute from the State courts, their affiliated organizations, the research literature, or other sources demonstrates that the project responds to another special need or interest of the State courts.

Concept papers and applications which address a "Special Interest" category will be accorded a preference in the rating process. (See the selection criteria listed in sections VI.B., "Concept Paper Submission Requirements for New Projects," and VIII.B., "Application Review Procedures.")

2. Specific Categories

The Board has designated the areas set forth below as "Special Interest" program categories. The order of listing does not imply any ordering of priorities among the categories.

a. *Methods of Judicial Selection.* This category includes examinations of various methods and procedures for appointing or electing judges to assist States in identifying those that best enhance public confidence in the State courts and assure that the most qualified individuals are attracted to judicial careers, and assessments of the impact of the application of Title 2 of the Voting Rights Act to direct election of State judges.

b. *Education and Training for Judges and Other Key Court Personnel.* With the exception of In-State Implementation projects and Judicial Education Scholarships, the Board of Directors has not established allocation targets for various types of judicial education projects for FY 1992. It anticipates that the Institute will continue to support development and presentation of a substantial number of innovative education and training programs by State as well as national providers, and particularly welcomes proposals in the areas listed below.

i. State Initiatives

This category includes support for training projects developed or endorsed by a State's courts for the benefit of judges and other court personnel in that State. Funding of these initiatives does not include support for training programs conducted by national providers of judicial education unless such a program is designed specifically for a particular State and has the express support of the State Chief Justice, State Court Administrator, or State Judicial Educator. The types of programs to be supported within this category should be defined by individual State need but may include:

(a) Development of In-State Education Programs

- Seed money for the creation of an ongoing State-based entity for planning, developing, and administering judicial education programs;
- The development of a pre-bench orientation program and other training for new judges;
- The development of benchbooks and other educational materials; and
- Seed money for innovative continuing education and career development programs, including seminars based on Institute-supported research, and training which brings together teams of judges, court managers and other court personnel to develop strategies for improving the quality and administration of justice.
- The preparation of State plans for judicial education, including model plans for career-long education of the judiciary (e.g., new judge training and orientation followed by continuing education and career development); and
- The development of State-determined standards for judicial education.

(b) Implementation of In-State Education Programs

The Board is reserving up to $250,000 to provide support for in-State implementation of model curricula and/or model training previously developed with SJI support. The exact amount to be awarded for implementation grants will depend on the number and quality of the applications submitted in this category and other categories of the Guideline. Implementation projects may include an in-State replication or State-specific modification of a model educational program, model curriculum, or course module developed with SJI funds by any other State or any national organization; an adaptation of a curriculum or a portion of a curriculum developed for a national or regional conference; or an adaptation of a curriculum for use as part of a State judicial conference or State training program for judges and other court personnel. Only State or local courts may apply for in-State implementation funding. Grants to support in-State implementation of educational programs previously developed with SJI funds are limited to no more than $20,000 each. As with other awards to State or local courts, cash or in-kind match must be provided equal to at least 50% of the grant amount requested.

In-State implementation grants will be awarded on the basis of criteria including: the need for outside funding; the certainty of effective implementation; and expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project. The Institute will also consider factors such as the reasonableness of the amount requested, compliance with the statutory match requirements, diversity of subject matter and geographic diversity in making implementation awards.

In lieu of concept papers and formal applications, applicants for in-State implementation grants may submit, at any time, a detailed letter describing the proposed project and addressing the

criteria listed above. Although there is no prescribed form for the letter nor a minimum or maximum page limit, letters of application should include the following information to assure that each of the criteria is addressed:

• *Project Description.* What is the model curriculum or training program to be tested? Who developed it? How will it complement existing education and training programs? Who will the participants be and how will they be recruited? How many participants are anticipated and what limits, if any, will be placed on the number of participants?

• *Need for funding.* Why is this particular education program needed at the present time? Why cannot State or local resources fully support the modification and presentation of the model curriculum? What is the potential for replicating the program in the future using State or local funds, once it has been successfully adapted and tested?

• *Certainty of effective implementation.* What date has been set for presenting the program? What types of modifications in the length, format and content of the model curriculum are anticipated? Who will be responsible for adapting the model curriculum? Will the presentation of the program be evaluated, and if so, how and by whom?

• *Expressions of interest by the judges and/or court personnel.* A demonstration (e.g., by attaching letters of support) that the proposed program has the support of the judges, court managers, and judicial education personnel who are expected to attend.

• *Budget and matching State contribution.* An outline of the anticipated costs of the program, the amount of funding requested (including the basis for any travel), the amount of match to be contributed, and the sources of the match.

Letters of application may be submitted at any time. It is anticipated that they will be acted upon within 45 days of receipt. The Board of Directors has delegated its authority to approve these grants to its Judicial Education Committee.

Applicants seeking other types of funding must comply with the requirements for concept papers and applications set forth in sections VI and VII or the requirements for renewal applications set forth in section IX.

ii. *National and Regional Training Programs*

This category includes support for national or regional training programs developed by any provider, e.g., national organizations, State courts, universities, or public interest groups. Within this category, priority will be given to training projects which address issues of major concern to the State judiciary and other court personnel. Programs to be supported may include:

• Training programs or seminars on topics of interest and concern that transcend State lines;

• Multi-State or regional training programs sponsored by national organizations, non-profit groups, State courts or universities; and

• Specialized training programs for State trial and appellate court judges, State and local court managers, or other court personnel, including seminars based on Institute-supported research and training which brings together teams of judges, court managers and other court personnel to develop strategies for improving the quality and administration of justice.

iii. *Technical Assistance*

Unlike the preceding categories which support direct training, "Technical Assistance" refers to services necessary for the development of effective educational projects for judges and other court personnel. Projects in this category should focus on the needs of the States, and applicants should demonstrate clearly their ability to work effectively with State judicial educators.

Within this category, priority will be given to the support of projects focused on State-to-State, State-to-national, and national-to-State transfer of ideas and information. Support and assistance to be provided by such projects may include:

• Education of faculty in effective adult education theory and practice, including the application of innovative instructional methods in subjects that require the learner to develop new skills and understanding as well as to acquire new knowledge;

• Consultation on planning, developing and administering State judicial education programs, including development of improved methods for assessing the need for and evaluating the quality and impact of court education programs;

• Methods for effective coordination and exchange of information and educational materials among State and national judicial education providers, including information dissemination about exemplary programs; and

• On-site assistance in any of the areas listed above.

In previous funding cycles, the Institute has supported projects for the broad-based provision of technical assistance services such as: Bringing together academically-based adult educators and judicial educators to design needs assessments, evaluations, faculty development workshops and other curricula; developing a database to provide comprehensive and specialized information on judicial education programs and providers across the nation as well as providing short-term technical assistance, usually from one State to another; the development of a modem-accessible database on judicial education faculty and their areas of specialization; leadership training for State judicial education teams in innovative teaching/learning approaches, curriculum design, and strategic planning for development and implementation of comprehensive State programs; and a national newsletter oriented primarily to State-based judicial education providers.

iv. *Conferences*

This category includes support for regional or national conferences on topics of major concern to the State judiciary and court personnel. The Institute intends to support the planning and presentation of three national conferences addressing the following three topics:

• Family Violence and the Courts;

• Improvement of the Adversary System;

• Results and Policy Implications of Evaluations of Court-Connected Dispute Resolution Programs and Procedures.

Additionally, the Institute intends to support the planning and presentation of a Conference of all State Supreme Court Justices.

(a) Family Violence and the Courts

The Board of Directors is specifically interested in receiving proposals from national organizations, universities, courts, and others to conduct a major national conference focusing on the implications for courts of recent research findings regarding effective methods for filing, screening, adjudicating or resolving, and disposing of cases involving spousal or child abuse. The envisioned conference should be planned in collaboration with judges, magistrates, court managers, researchers in the field of domestic violence, prosecutors, representatives from the defense bar, child protective services personnel, treatment providers, and victim advocates/service providers.

Among the issues the conference should address are:

• The appropriateness of hearing family violence cases in criminal vs. juvenile or family court;

• Effective court processes for handling family violence cases, including protocols for juvenile/family

court and criminal court judges and magistrates;

• Coordination among courts handling related cases in which different members of the same family are involved;

• The appropriateness of mediation in divorce cases in which family violence is alleged;

• Effective sanctions/sentencing including the effectiveness of batterer treatment programs in changing behavior and controlling anger;

• Effective procedures for obtaining and enforcing civil protection orders, and the effectiveness of such orders in protecting victims and families;

• Assessing the risk of escalating violence;

• The relationship between family violence and substance abuse;

• Understanding the dynamics of family violence and why victims remain in violent relationships; and

• Intrafamilial child sexual abuse.

In order to convene this important conference as soon as possible, the Board has approved an accelerated schedule for the consideration of concept papers and applications proposing the conference. Concept papers must be mailed no later than October 30, 1991. The Board will consider the concept papers and invite formal applications at its November 21–24, 1991, meeting. The applications will be considered at the Board's meeting on March 5–8, 1992.

(b) The Improvement of the Adversary System. There have been a number of conferences and symposia addressing alternative dispute resolution procedures and their relationship to the courts. The Board of Directors is now interested in supporting a national conference and the development of background material that would identify the key issues regarding the adversary system, including its strengths and its weaknesses, and develop an agenda for improving both the system and the public's perception of the system.

Among the many topics that could be addressed at the conference are:

• The types of cases for which the adversary process may be the most appropriate and the least appropriate;

• The role of the jury and the use of special or blue-ribbon juries;

• Simplifying the pretrial process, including voir dire; the best way of presenting and adjudicating technically complex cases;

• Methods for reducing trial length and expediting the trial process;

• The education of trial counsel and litigants about settlement techniques and methods for determining the value of their cases;

• The use and impact of Rule 11 and other sanctions;

• The effects of new technologies on the trial process;

• The improved resolution of complex or novel scientific issues; and

• Improving access to the adversary process for poor and middle-income litigants.

The conference should involve the participation of judges, attorneys, court managers, legal scholars, researchers, business leaders, citizens' organizations, dispute resolution specialists, and media representatives.

(c) Symposium on the Results and Policy Implications of Evaluations of Court-Connected Dispute Resolution Programs and Procedures. Since its inception, the Institute has supported more than 35 demonstration, research, and evaluation projects as well as a national conference focusing on court-related alternative dispute resolution procedures and programs. The Institute has emphasized assessments of programs and procedures that have a substantial likelihood of resolving civil, criminal, family, and juvenile cases in a more fair, expeditious, and less expensive manner than traditional court processing, with special attention focused on the effect of such programs on the quality of justice, litigant and court costs, court workload, and case processing.

The Board of Directors is interested in supporting a national interactive symposium for State court judges, court managers, court-connected dispute resolution program administrators, evaluators of court-connected dispute resolution programs and other researchers to share the results of the evaluations supported by the Institute and others, and to determine their implication for court policies, procedures and programs. The Institute is specifically interested in a practical exchange of research results that will enable court-related practitioners to develop, assess or modify the following: Program structure and management; selection, training and retention of neutrals; eligibility criteria; case processing; case screening and referral procedures and criteria; the information available to judges, court managers and other court personnel, attorneys and litigants; dispute resolution procedures; program costs; and other relevant issues.

In developing the proposed subject matter for such a conference, interested applicants should be aware that the Institute has funded evaluation projects that focus on: Juvenile offender-victim mediation; divorce mediation; court-annexed arbitration of civil cases; court-annexed mediation of civil, criminal, and domestic relations cases; medical malpractice mediation; alternatives to adjudication in child abuse and neglect cases; early neutral evaluation of motor vehicle cases; appellate mediation; the impact of private judging on the State courts; multi-door courthouse programs; rural ADR programs; and civil settlement processes.

Additional SJI-supported ADR projects include: Development of standards for court-annexed mediation programs; the promotion and development of multi-door courthouse approaches in specific jurisdictions; testing of a referral-based mediation program; the retention and productivity of volunteer community mediators; the applicability of various dispute resolution procedures to different cultural groups; an examination of whether mediation of matters involving domestic violence is safe and appropriate; and a national directory of court-connected ADR programs.

(d) State Supreme Court Justices Conference. In light of the lack of opportunity for all members of the Supreme Courts of each of the States to meet together and discuss issues of common concern, the Institute invites proposals to sponsor an educational conference where State Supreme Court justices, legal scholars, and other participants would exchange information about:

• Developing trends in civil, criminal, domestic relations, juvenile, and mental health law;

• Emerging doctrines and principles in State constitutional law and the appropriate use of independent State grounds;

• Problems and solutions in the relationship between State Supreme courts and the Federal court system;

• Appellate procedures and case management techniques;

• The application of technology to assist the appellate process; and

• Other developments in substantive law and judicial administration.

All court education programs should assure that faculty understand and apply adult education techniques and teaching methods; provide opportunities for structured interaction among participants; develop tangible products and materials for use by the faculty, participants and other judicial educators; employ a process for the recruitment of qualified and effective faculty; and develop sound methods for evaluating the impact of the training.

v. Judicial Education Scholarships. The Board of Directors is reserving up to $100,000 to support an experimental

judicial education scholarship program in FY 1992. The purposes of the experimental program are to: (1) Test the national demand for scholarships; (2) determine whether the availability of SJI funding can meaningfully assist and encourage States to support out-of-State judicial education; and (3) test the feasibility of establishing a permanent scholarship program. The Board would like to provide at least one scholarship per State.

The Institute will fund up to 75% of the total cost of attending a program (including travel, tuition, lodging, meals, and other necessary expenses), up to a maximum of $1,500 per scholarship. Scholarships will be granted to individuals only for the purpose of attending out-of-State programs within the United States.

The Board has delegated the authority to approve or deny scholarships to its Judicial Education Committee. In order to assure the availability of scholarship funds throughout the year, the Committee will limit the amount of scholarship support awarded in any quarter to no more than $30,000.

(a) How to Apply. Judges interested in obtaining a scholarship must submit the application form (Form S1) included in appendix III. Applications may be submitted at any time, but should be submitted as far in advance of the training as possible (preferably at least 60 days before the start of the program). The applicant must also obtain the written concurrence of the Chief Justice of his or her State (or the Chief Justice's designee) on Form S2 also included in appendix III. The Chief Justice may concur in more than one scholarship request.

(b) Selection Criteria.

- The applicant's commitment to judicial service, as demonstrated by being a full-time judge, years of service as a judge, and anticipated future years of service as a judge;
- The applicant's commitment to judicial education, as demonstrated by previous attendance at non-mandatory in-State judicial education programs, and prior faculty experience or other leadership roles in judicial education programs;
- The applicant's need for the specific educational program and the scholarship, as demonstrated by a description of the applicant's need for training in the particular subject for which the scholarship is sought; how attending this program would enhance the applicant's judicial career and future service on the bench; the lack of educational programs in the applicant's State addressing the particular topic or the uniqueness of the out-of-State program the applicant wishes to attend; the length of time since attendance at last non-mandatory judicial education program; and the unavailability of funds from State or local sources.
- The State's need for the specific educational program, as demonstrated by a signed Form S2 and other indications of need;
- The quality of the educational program, as demonstrated by the sponsoring organization's experience in judicial education; evaluations by participants or other professionals in the field; or prior SJI support for this or other programs sponsored by the organization.

Other factors that will be considered include: geographic balance; the balance of scholarships among types of judges (e.g., trial and appellate, experienced and new) and types of courts (e.g., family, juvenile, criminal); and the uniqueness or innovativeness of the program in terms of the topic or educational approach.

(c) Responsibilities of Scholarship Recipients. Recipients must submit an evaluation of the educational program they attended to the Chief Justice of their State and to SJI.

A State may impose additional requirements on scholarship recipients that are consistent with SJI's criteria and requirements, e.g., to serve as faculty on the subject at an in-State judicial education program.

c. *Court Financing and Use of Resources.* This category includes projects to improve methods for securing adequate resources for courts and efficiently managing those resources. Among possible topics that could be addressed under this category are: research examining the results, benefits and drawbacks of various methods of financing the courts, including reliance on user and filing fees as well as various methods for enhancing the stability and equity of court funding; and demonstration, technical assistance and education projects concerning innovative methods of allocating resources to maintain or improve court services, and techniques for managing reductions of services and personnel levels in a court environment.

d. *The Future and the Courts.* The mission of the Future and the Courts Conference convened by SJI and the American Judicature Society in San Antonio in May 1990 was to "formulate visions of the American judicial system over the next 30 years and beyond, establish goals for the long-term needs of the State courts, and identify an agenda for planning, action and research to achieve those goals." The Institute is interested in supporting "second-stage" activities that would enable courts to initiate futures research and long-range strategic planning activities in their own jurisdictions.

Among the types of projects that fall within this category are:

(i) Statewide futures conferences and educational programs exposing judges and court staff to futures thinking and the trends that might impact their courts;

(ii) Development, implementation, and evaluation of long-range planning efforts in individual States and local jurisdictions, e.g., the development or inclusion of strategic planning techniques, environmental scanning, trends analysis and other futures and long-range planning and research approaches as components of the courts' current planning process or as part of the initiation of such a process;

(iii) Workshops to bring together people from States that have engaged in futures efforts, States that are just beginning those efforts, and States that are just starting to think about them, in order to exchange experiences and identify major problem areas and solutions;

(iv) Symposia dedicated to specific topics or issues, (such as the impact of new technologies on traditional notions of due process, or the effect on the courts of changing demographics and other cultures' varied perceptions of justice, conflict, and dispute resolution procedures), identified during the Future and the Courts Conference or other futures activities, that could result in recommendations for courts about future research, planning, training, and action; and

(v) Development of informational materials and curricula to enable judges and court personnel to become more familiar with and apply futures thinking and planning principles.

The Institute has supported futures commissions in seven States. Because the Board of Directors believes that a sufficient variety of commission models now exists, the Institute will not support the development or implementation of any State futures commissions in FY 1992.

e. *Improving Communication and Coordination Among Courts.* This category includes the development, implementation and evaluation of innovative procedural, administrative, technological, and organizational methods to improve communication and coordination among State trial and appellate courts and between State and Federal courts hearing related cases. Among the circumstances in which such improved communication and

coordination are particularly needed, are:

- Instances in which a litigant in a State civil, criminal or domestic relations case is subject to a Federal bankruptcy proceeding;
- Instances in which a defendant has charges pending in both State and Federal court in more than one State court;
- Post-conviction challenges in capital cases; and
- Mass tort litigation.

f. *Application of Technology.* This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels.

The Board seeks to support local experiments with promising but untested applications of technology in the courts that include a structured evaluation of the impact of the technology in terms of costs, benefits, and staff workload. In this context, "untested" refers to novel applications of technology developed for the private sector and other fields that have not previously been applied to the courts. (See paragraph XI.H.2.b. regarding the limits on the use of grant funds to purchase equipment and software.)

In previous funding cycles, grants have been awarded to support:

Demonstration and evaluation of communications technology, e.g.: Interactive computerized information systems to assist pro se litigants; an electronic mail system and computer-based bulletin board to facilitate information transfer among criminal justice agencies in adjoining local jurisdictions; the effects of telephone conferencing in interstate child support cases; the use of FAX technology by courts; a multi-user "system for judicial interchange" designed to link disparate automated information systems and share court information among judicial system offices throughout a State without replacement of the various hardware and software environments which support individual courts; a computerized voice information system permitting parties to access by telephone information pertaining to their cases; an automated public information directory of courthouse facilities and services; and the use of a microcomputer local area network to foster communication among judges and promote a team approach to handling caseloads;

Demonstration and evaluation of records technology, e.g.: The effects, costs, and benefits of videotape as a technique for making the record of trial court proceedings; an automated microfilm system and an optical disk system for maintaining and retrieving court records; an automated Statewide records management system; the integration of bar-coding technology with an existing automated case management system; an on-bench automated system for generating and processing court orders; development of an information retrieval and analysis system specifically designed for court management; and detailed specifications for construction of an automated judicial education management system;

Court technology assistance services, e.g.: Circulation of a court technology bulletin designed to inform judges and court managers about the latest developments in court-related technologies; creation of a court technology laboratory to provide judges and court managers with the opportunity to test automated court-related systems; enhancement of a data base and circulation of reports documenting automated systems currently in use in courts across the country; establishment of a technical information service to respond to specific inquiries concerning court-related technologies; development of court automation performance standards; and a manual for court managers on practical issues relating to the use of computer-aided transcription.

Current grants also are supporting development of a seminar for judges and court managers in an automated "courtroom of the future," implementation and evaluation of a Statewide automated integrated case docketing and record-keeping system, and a national assessment of the efforts to develop and implement Statewide automation of trial courts.

g. *Reduction of Litigation Expense and Delay.* This category includes the testing, implementation, and evaluation of innovative programs and procedures designed to reduce substantially the expense and delay in litigation. Given the range of topics addressed by projects supported by the Institute in previous funding cycles, the Board of Directors is particularly interested in projects addressing the reduction of expense and delay in juvenile and probate courts.

In previous funding cycles, grants have been awarded to support the examination of the causes of delay and the methods for improving case processing in trial courts in rural jurisdictions, limited jurisdiction urban trial courts, and in intermediate appellate courts. In addition, grant support has been awarded to projects testing or examining the impact of innovative procedures for: screening civil cases, handling medical malpractice cases, and expediting appellate decisions.

The Institute has also supported studies of case processing in domestic relations cases, the extent of case processing problems caused by discovery, and methods for effectively managing motions practice in civil cases, as well as assistance to trial courts in major urban areas and to appellate courts to improve case processing, adopt and implement time standards, and otherwise reduce litigation delay.

h. *Substance Abuse.* This category includes the development and evaluation of innovative case management techniques for handling the increasing volume of substance abuse-related criminal, civil, juvenile and domestic relations cases fairly and expeditiously; the development and testing of programs which establish coordinated efforts between local courts and treatment providers; the evaluation of innovative programs that minimize or reduce recidivism; the development, testing and evaluation of profiles, guides, risk assessment instruments and other tools to assist judges in making release, dispositional, treatment, and sentencing decisions in cases involving substance-abusing persons; and the planning and presentation of seminars or other educational forums for judges, probation officers, caseworkers, and other court personnel to examine court-related issues concerning alcohol and other drug abuse, discuss the appropriate role of the courts in addressing the problem of substance abuse, and develop specific plans for how individual courts can respond to the impact of the increasing volume of substance abuse-related criminal, civil, juvenile, and domestic relations cases on their ability to manage their overall caseloads fairly and efficiently.

Follow-up Projects to the November 1991 Substance Abuse and the Courts Conference. In addition, this category includes State and local court projects to implement the action plans and strategies developed by the State teams attending the National Conference on Substance Abuse and the Courts sponsored by SJI and the Bureau of Justice Assistance in Washington, DC, in November, 1991, as well as projects submitted by other applicants to assist in implementing and disseminating the findings, strategies, and information developed at the Conference. In order to enhance the impact of the Conference and facilitate the implementation of the

developed State strategies, concept papers proposing such projects will be accepted on or before March 3, 1992. The Board will review the concept papers at its April meeting.

Projects not directly following up on the Conference must be submitted at the same time as concept papers addressing other Special Interest categories or Program Areas.

In previous funding cycles, the Institute has supported demonstration projects which evaluate the drug court procedures initiated by the Dade County, Florida, and New York City courts, and the effectiveness of court-based alcohol and drug assessment programs; research on the impact of legislation and court decisions dealing with drug-affected infants, and on effective strategies for coping with increasing caseload pressures; development of a benchbook to assist judges in child abuse and neglect cases involving parental substance abuse; and local educational and training programs for judges and other court personnel on substance abuse and its treatment.

i. *Eliminating Unnecessary Barriers to the Courts.* This category includes research, demonstration, evaluation and education projects designed to remove unnecessary barriers to court services, whether geographic, economic, physical or procedural, and to provide opportunities for effective participation of all persons involved in court proceedings including litigants, witnesses, jurors, counsel and court personnel. Examples of the issues that may be addressed include but are not limited to the development and testing of: Innovative methods that trial or appellate courts may use in fairly and effectively handling cases involving pro se litigants; innovative techniques for improving the physical accessibility, convenience and security of court facilities and services to the public, including persons with mobility or communications impairments or other physical or mental disabilities; innovative methods to improve procedural accessibility to the courts through the use of simple and clear forms and informational booklets; the innovative use of volunteers; and other innovative approaches to respond to the needs of the culturally, demographically, economically and physically diverse public the courts serve. This category also includes examination of the use and impact on the public of orders limiting access to courtrooms and sealing settlement agreements and dispositional orders. Institute funds may not be used to support legal representation of individuals in specific cases.

Projects previously funded by the Institute that address these issues include: Development of a manual for management of court interpretation services; codification and standardization of terms used in criminal proceedings into Spanish and preparation of glossaries of American legal terms in five Asian languages; a survey model to measure the impact of racial, ethnic and gender bias on trial court users; a study of differential usage patterns among minority and non-minority populations; a demonstration of the use of volunteers to monitor guardianships; a study of model court-annexed day care systems; the retention and productivity of volunteer community mediators; the applicability of various dispute resolution procedures to different cultural groups; and the development of comprehensive guidelines for courthouse facilities.

j. *Responding to the Court-Related Needs of Elderly Persons and Persons with Disabilities.* This category includes research, demonstration, and evaluation projects on issues related to the fair and effective handling of cases affecting elderly and physically or mentally disabled persons. The issues that may be addressed include but are not limited to:

- Implementation of the recommendations of the National Conference on Court-Related Needs of Elderly Persons and Persons with Disabilities held in February, 1991 in Reno, Nevada;
- The fair and effective consideration of cases involving elderly or disabled victims of crime or abuse;
- The testing of the model judicial guidelines for making life-support decisions and other methods for the fair and effective consideration of cases concerning the cessation of medical and other services to elderly or disabled persons; and
- The basis for determining health-care related legal issues such as: The competency of individuals, what constitutes clear and convincing evidence of a person's wish not to initiate or continue life-sustaining treatment, the allocation of costs for routine and extraordinary health care, and the appropriate use of experimental and other health care procedures.

In previous funding cycles, the Institute has supported: Several projects to examine, identify and test procedures to improve the monitoring and enforcement of guardianship orders; a project to develop guidelines for judges in considering cases regarding the withdrawal of life-sustaining treatment; projects to develop training materials on guardianship for judges and potential guardians; projects to develop a benchbook and training materials for judges, probation officers, and probationers regarding AIDS; and a project to develop national standards for probate courts. The Institute also supported a national conference on the court-related problems of elderly persons and persons with disabilities, and is supporting technical assistance and educational programs to disseminate and help implement the findings and recommendations of that conference.

k. *The Relationship Between State and Federal Courts.* This category includes research to develop creative ideas and procedures that could improve the administration of justice in the State courts and at the same time reduce the work burdens of the Federal courts. Such research projects might address innovative State court procedures for:

- Handling civil, criminal, domestic relations or other types of cases in which a party also is subject to a Federal bankruptcy proceeding;
- Processing complex multistate litigation in the State courts;
- Facilitating the adjudication of Federal law questions by State courts with appropriate opportunities for review;
- Reducing the burdens attendant to Federal habeas corpus cases involving State convictions; and
- Otherwise allocating judicial burdens between and among Federal and State courts.

Other possible areas of research include studies examining the impact on the State courts of the enforcement of Federal statutes.

In previous funding cycles, the Institute has supported projects examining the impact on the State courts of diversity cases and cases brought under section 1983, the procedures used in Federal habeas corpus review of State court criminal cases, the factors that motivate litigants to select Federal or State courts and the mechanisms for transferring cases between Federal and State courts, as well as the methods for effectively consolidating, deciding, and managing complex litigation. The Institute has also supported a clearinghouse of information on State constitutional law decisions.

C. Programs Addressing a Critical Need of a Single State or Local Jurisdiction

1. The Board will set aside up to $1,000,000 to support projects submitted

by State or local courts that address the needs of only the applicant State or local jurisdiction. A project under this section may address any of the topics included in the Special Interest Categories or Statutory Program Areas, and may, but need not, seek to implement the findings and recommendations of Institute-supported research, evaluation, or demonstration programs. Concept papers for single jurisdiction projects may be submitted by a State court system, an appellate court, or a limited or general jurisdiction trial court in an urban, rural or suburban area.

2. Concept papers and applications requesting funds for projects under this section must meet the requirements of sections VI ("Concept Paper Submission Requirements for New Projects") and VII ("Application Requirements"), respectively, and must demonstrate that:

a. The proposed project is essential to meeting a critical need of the jurisdiction; and

b. The need cannot be met solely with State and local resources within the foreseeable future.

3. All awards under this category are subject to the matching requirements set forth in section X.B.1.

III. Definitions

The following definitions apply for the purposes of this guideline:

A. *Institute.* The State Justice Institute.

B. *State Supreme Court.* The highest appellate court in a State, unless, for the purposes of the Institute program, a constitutionally or legislatively established judicial council that acts in place of that court. In States having more than one court with final appellate authority, *State Supreme Court* shall mean that court which also has administrative responsibility for the State's judicial system. *State Supreme Court* also includes the office of the court or council, if any, it designates to perform the functions described in this guideline.

C. *Designated Agency or Council.* The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and be accountable for those funds.

D. *Grantor Agency.* The State Justice Institute.

E. *Grantee.* The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, grantee refers to the State Supreme Court.

F. *Subgrantee.* A State or local court which receives Institute funds through the State Supreme Court.

G. *Match.* The portion of project costs not borne by the Institute. Match includes both in-kind and cash contributions. Cash match is the direct outlay of funds by the grantee to support the project. In-kind match consists of contributions of time, services, space, supplies, etc., made to the project by the grantee or others (e.g., advisory board members) working directly on the project. Match does not include project-related income such as tuition or payments for grant products, nor time of participants attending an education program.

H. *Continuation Grant.* A grant of no more than 24 months to permit completion of activities initiated under an existing Institute grant or enhancement of the programs or services produced or established during the prior grant period.

I. *On-going Support Grant.* A grant of up to 36 months to support a project that is national in scope and that provides the State courts with services, programs or products for which there is a continuing important need.

J. *Human Subjects.* Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions and/or experiences through an interview, questionnaire, or other data collection technique(s).

IV. Eligibility for Award

In awarding funds to accomplish these objectives and purposes, the Institute has been directed by Congress to give priority to State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)); national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705 (b)(1)(B)); and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).

An applicant will be considered a "priority" education and training applicant under section 10705(b)(1)(C) if: (1) The principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and (2) the applicant demonstrates a record of substantial experience in the field of judicial education and training.

The Institute also is authorized to make awards to other nonprofit organizations with expertise in judicial administration, institutions of higher education, individuals, partnerships, firms, corporations, and private agencies with expertise in judicial administration, provided that the objectives of the relevant program area(s) can be served better. In making this judgment, the Institute will consider the likely replicability of the projects' methodology and results in other jurisdictions. For-profit organizations are also eligible for grants and cooperative agreements; however, they must waive their fees.

Finally, the Institute is authorized to make awards to Federal, State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements.

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section XI.B.2 of this Guideline. A list of persons to contact in each State regarding approval of applications from State and local courts and administration of Institute grants to those courts is contained in the Appendix.

V. Types of Projects and Amounts of Awards

A. Types of Projects

Except as expressly provided in section II.B.2.b. and II.C. above, the Institute has placed no limitation on the overall number of awards or the number of awards in each special interest category. The general types of projects are:

1. Education and training;
2. Research and evaluation;
3. Demonstration; and
4. Technical assistance.

B. Size of Awards

1. Except as specified in paragraphs V.B.2. and 3., concept papers and applications for new projects and applications for continuation grants may request funding in amounts up to $300,000, although new and continuation awards in excess of $200,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally.

2. Applications for on-going support grants may request funding in amounts up to $600,000. At the discretion of the Board, the funds to support on-going support grants may be awarded either entirely from the Institute's

appropriations for the Fiscal Year of the award or from the Institute's appropriations for successive Fiscal Years beginning with the Fiscal Year of the award. When funds to support the full amount of an on-going support grant are not awarded from the appropriations for the Fiscal Year of award, funds to support any subsequent years of the grant will be made available upon (1) the satisfactory performance of the project as reflected in the quarterly Progress Reports required to be filed and grant monitoring, and (2) the availability of appropriations for that Fiscal Year.

C. Length of Grant Periods

1. Grant periods for all new and continuation projects ordinarily will not exceed 24 months.

2. Grant periods for on-going support grants ordinarily will not exceed 36 months.

VI. Concept Paper Submission Requirements for New Projects

Concept papers are an extremely important part of the application process because they enable the Institute to learn the program areas of primary interest to the courts and to explore innovative ideas, without imposing heavy burdens on prospective applicants. The use of concept papers also permits the Institute to better project the nature and amount of grant awards. Because of their importance, the Institute requires all parties requesting financial assistance from the Institute (except those seeking renewal funding pursuant to section IX.) to submit concept papers prior to submitting a formal grant application. This requirement and the submission deadlines for concept papers and applications may be waived for good cause (e.g., the proposed project would provide a significant benefit to the State courts or the opportunity to conduct the project did not arise until after the deadline).

A. Format and Content

Concept papers include a cover sheet, a narrative, and a preliminary budget.

1. The cover sheet must contain:

a. A title describing the proposed project;

b. The name and address of the court, organization or individual submitting the paper;

c. The name, title, address (if different from that in b.), and telephone number of a contact person who can provide further information about the paper; and

d. The letter of the Special Interest Category (see section II.B.2.) or the number of the statutory Program Area (see section II.B.1.) that the proposed project addresses most directly.

2. The narrative should be no longer than necessary, but in no case should exceed eight (8) double-spaced pages on 8½ by 11 inch paper. Margins must not be less than 1 inch and no smaller than 12 point type must be used. The narrative should describe:

a. *Why this project is needed and how it will benefit State courts.* If the project is to be conducted in a specific location(s), applicants should discuss the particular needs of the project site(s) to be addressed by the project, why those needs are not being met through the use of existing materials, programs, procedures, services or other resources, and the benefits that would be realized by the proposed sites(s).

If the project is not site specific, applicants should discuss the problems that the proposed project will address, why existing materials, programs, procedures, services or other resources do not adequately resolve those problems, and the benefits that would be realized from the project by State courts generally.

b. *What will be done if a grant is awarded.* A summary description of the project to be conducted and the approach to be taken.

c. *How the effects and quality of the project will be determined.* A summary description of how the project will be evaluated, including the evaluation criteria.

d. *How others will find out about the project and be able to use the results.* A description of the products that will result, the degree to which they will be applicable to courts across the nation, and the manner in which the products and results of the project will be disseminated.

3. A preliminary budget must be attached to the narrative that includes the estimates and information specified on Form E included in appendix IV of this Guideline.

4. The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

5. The Institute will not accept concept papers exceeding eight (8) double-spaced pages. The page limit does not include the cover page, budget form, and any letters of cooperation or endorsements. Additional material should not be attached unless it is essential to impart a clear understanding of the project.

6. Applicants submitting more than one concept paper may include material that would be identical in each concept paper in a cover letter, and incorporate that material by reference in each paper. The incorporated material will be counted against the eight-page limit for each paper. A copy of the cover letter should be attached to each copy of each concept paper.

7. Sample concept papers from previous funding cycles are available from the Institute upon request.

B. Selection Criteria

1. All concept papers will be evaluated by the staff on the basis of the following criteria:

a. The demonstration of need for the project;

b. The soundness and innovativeness of the approach described;

c. The benefits to be derived from the project;

d. The reasonableness of the proposed budget;

e. The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B; and

f. The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

2. "Single jurisdiction" concept papers submitted pursuant to section II.C. will be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B., and on the special requirements listed in section II.C.1.

3. In determining which concept papers will be selected for development into full applications, the Institute will also consider the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the submitter's anticipated match; whether the submitter is a "priority applicant" under the Institute's enabling legislation (see 42 U.S.C. 10705(b)(1) and section IV above); and the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements.

C. Review Process.

Concept papers will be reviewed competitively by the Board of Directors. Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion for those concept papers which fall within the scope of the Institute's funding program and merit serious consideration by the Board. Staff will also prepare a list of those papers that, in the judgment of the Executive Director, propose projects that lie outside the scope of the Institute's

funding program or are not likely to merit serious consideration by the Board. The narrative summaries, rating sheets, and list of non-reviewed papers will be presented to the Board for their review. Committees of the Board will review concept paper summaries within assigned program areas and prepare recommendations for the full Board. The full Board of Directors will then decide which concept paper applicants should be invited to submit formal applications for funding. The decision to invite an application is solely that of the Board of Directors.

The Board may waive the application requirement and approve a grant based on a concept paper for a legal research or planning project requiring less than $40,000, when the need for and benefits of the project are clear, and the methodology and budget require little additional explanation.

D. Submission Requirements.

An original and three copies of all concept papers submitted for consideration in Fiscal Year 1992 must be sent by first class or overnight mail or by courier no later than December 4, 1991, except for concept papers proposing to conduct a National Conference on Family Violence and the Courts which must be sent by October 30, 1991 (see Special Interest category (b.iv.(a)), and concept papers proposing projects that follow-up on the National Conference on Substance Abuse and the Courts which must be sent by March 3, 1992 (see Special Interest category h.). A postmark or courier receipt will constitute evidence of the submission date. All envelopes containing concept papers should be marked CONCEPT PAPER and should be sent to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314.

It is preferable for letters of cooperation and support to be appended to the concept paper when it is submitted. However, any such letter received prior to the meeting of the Board of Directors at which the paper is considered will be brought to the attention of the Board.

The Board will meet to review the concept papers and invite applications for the National Conference on Family Violence and the Courts on November 21–24, 1991. It will meet on March 5–8, 1992, to review concept papers and invite applications on other topics, and will meet April 30–May 3, 1992, to consider concept papers to follow-up on the National Conference on Substance Abuse and the Courts.

The Institute will send written notice to all persons submitting concept papers of the Board's decisions regarding their papers and of the key issues and questions that arose during the review process. A decision by the Board not to invite an application may not be appealed, but does not prohibit resubmission of the concept paper or a revision thereof in a subsequent round of funding. The Institute will also notify the designated State contact listed in the appendix when the Board invites applications that are based on concept papers which are submitted by courts within their State or which specify a participating site within their State.

Receipt of each concept paper will be acknowledged in writing. Extensions of the deadline for submission of concept papers will not be granted.

VII. Application Requirements for New Projects

Except as specified in section VI., a formal application for a new project is to be submitted only upon invitation of the Board following review of a concept paper. An application for Institute funding support must include an application form, budget forms (with appropriate documentation), a project abstract and program narrative, and certain certifications and assurances. These documents are described below.

A. Forms

1. Application Form (FORM A)

The application form requests basic information regarding the proposed project, the applicant, and the amount of funding support requested. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete, that submission of the application has been authorized by the applicant, and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

2. Certificate of State Approval (FORM B)

An application from a State or local court must include a copy of FORM B signed by the State's Chief Justice or Chief Judge, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if funding for the project is approved by the Institute, the court or designated agency or council will receive, administer, and be accountable for the awarded funds.

3. Budget Forms (FORM C or C1)

Applicants may submit the proposed project budget either in the tabular format of FORM C or in the spreadsheet format of FORM C1. Applicants requesting more than $100,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than a year, a separate form should be submitted for each year or portion of a year for which grant support is requested.

In addition to FORM C or C1, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category. (See section VII.D.)

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

4. Assurances (FORM D)

This form lists the statutory, regulatory, and policy requirements and conditions with which recipients of Institute funds must comply.

B. Project Abstract

The abstract should highlight the purposes, goals, methods and anticipated benefits of the proposed project. It should not exceed one single-spaced page on 8½ by 11 inch paper.

C. Program Narrative

The program narrative should not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins must not be less than 1 inch, and no smaller than 12 point type must be used. The page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to obtaining a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

1. *Project Objectives.* A clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (e.g., to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (e.g., provide training for 32 judges and court managers, or review data from 300 cases).

2. *Program Areas to be Covered.* A statement which lists the program areas set forth in the State Justice Institute Act, and, if appropriate, the Institute's Special Interest program categories that are addressed by the proposed projects.

3. *Need for the Project.* If the project is to be conducted in a specific location(s), a discussion of the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing materials, programs, procedures, services or other resources.

If the project is not site specific, a discussion of the problems that the proposed project will address, and why existing materials, programs, procedures, services or other resources do not adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

4. *Tasks, Methods and Evaluation.*

a. Tasks and Methods. A delineation of the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

For research and evaluation projects, the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to the human subjects, a discussion should be included of the value of the proposed research and the methods to be used to minimize or eliminate such risk.

For education and training projects, the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty will be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars or workshops to be conducted; the materials to be provided and how they will be developed; and the cost to participants.

For demonstration projects, the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they will be identified and their cooperation obtained; how the program or procedures will be implemented and monitored.

For technical assistance projects, the types of assistance that will be provided; the particular issues and problems for which assistance will be provided; how requests will be obtained and the type of assistance determined; how suitable providers will be selected and briefed; how reports will be reviewed; and the cost to recipients.

b. Evaluation. Every project design must include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology or services tested; or the validity and applicability of the research conducted. In addition, where appropriate, the evaluation process should be designed to provide ongoing or periodic feedback on the effectiveness or utility of particular programs, educational offerings, or achievements which can then be further refined as a result of the evaluation process. The plan should present the qualifications of the evaluator(s); describe the criteria, related to the project's programmatic objectives, that will be used to evaluate the project's effectiveness; explain how the evaluation will be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach is appropriate; and present a schedule for completion of the evaluation within the proposed project period.

The evaluation plan should be appropriate to the type of project proposed. For example, an evaluation approach suited to many research projects is review by an advisory panel of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted. The panel should be comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

The most valuable approaches to evaluating educational or training programs will serve to reinforce the participants' learning experience while providing useful feedback on the impact of the program and possible areas for improvement. One appropriate evaluation approach is to assess the acquisition of new knowledge, skills, attitudes or understanding through participant feedback on the seminar or training event. Such feedback might include a self-assessment on what was learned along with the participant's response to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented and other relevant factors. Another appropriate approach when an education project involves the development of curricular materials is the use of an advisory panel of relevant experts coupled with a test of the curriculum to obtain the reactions of participants and faculty as indicated above.

The evaluation plan for a demonstration project should encompass an assessment of program effectiveness (e.g., how well did it work?); user satisfaction, if appropriate; the cost-effectiveness of the program; a process analysis of the program (e.g., was the program implemented as designed? did it provide the services intended to the targeted population?); the impact of the program (e.g., what effect did the program have on the court? what benefits resulted from the program?); and the replicability of the program or components of the program.

For technical assistance projects, applicants should explain how the quality, timeliness, and impact of the assistance provided will be determined, and should develop a mechanism for feedback from both the users and providers of the technical assistance.

5. *Project Management.* A detailed management plan including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that will be used to ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination will occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (i.e., no later than January 30, April 30, July 30, and October 30).

6. *Products.* A description of the products to be developed by the project (e.g., training curricula and materials, videotapes, articles, manuals, or handbooks), including when they will be submitted to the Institute. The application must explain how and to whom the products will be

disseminated; describe how they will benefit the State courts including how they can be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant will be offered to the courts community and the public at large.

Ordinarily, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that will be disseminated to the project's primary audience, or both. The products developed by education and training projects should be designed for use outside the classroom so that they may be used again by original participants and others in the course of their duties.

Applicants must provide for submitting a final draft of the final grant product(s) to the Institute for review and approval before the product(s) are published or reproduced. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of the Institute. Applicants must also provide for including in all project products a prominent acknowledgment that support was received from the Institute and a disclaimer paragraph based on the example provided in section X.Q. of the Guideline. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless the Institute approves another placement.

Twenty copies of all project products, including videotapes, must be submitted to the Institute. In addition, a copy of each product must be sent to the library established in each State to collect the materials developed with Institute support. (A list of these libraries is contained in appendix II). For all wordprocessed products, grantees must submit a diskette of the text in ASCII. For non-text products, a copy of the executive summary or a brief abstract in ASCII must be submitted.

7. *Applicant Status.* An applicant that is not a State or local court and has not received a grant from the Institute within the past two years should include a statement indicating whether it is requesting "priority status" recognition as either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments; or a national non-profit organization for the education and training of State court judges and support personnel. See section IV. A request for recognition as a priority recipient pursuant to 42 U.S.C. 10705 (b)(1)(B) or (1)(C) must set forth the basis for designation as a priority recipient in its application. Non-judicial units of Federal, State, or local government must demonstrate that the proposed services are not available from non-governmental sources.

8. *Staff Capability.* A summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that will be used to select persons for these positions should be included.

9. *Organizational Capacity.* Applicants that have not received a grant from the Institute within the past two years should include a statement describing the capacity of the applicant to administer grant funds including the financial systems used to monitor project expenditures (and income, if any), and a summary of the applicant's past experience in administering grants, as well as any resources or capabilities that the applicant has that will particularly assist in the successful completion of the project.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, "current" means no earlier than two years prior to the current calendar year. If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire which must be signed by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

Unless requested otherwise, an applicant that has received a grant from the Institute within the past two years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

10. *Statement of Lobbying Activities.* Non-governmental applicants must submit the Institute's Disclosure of Lobbying Activities Form that requires them to state whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts.

11. *Letters of Support for the Project.* If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, written assurances of cooperation and availability should be attached as an appendix to the application.

D. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. Additional background or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should address the items listed below. The costs attributable to the project evaluation should be clearly identified.

1. Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by the individuals who will serve as the staff of the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rate of those individuals. The applicant should explain any deviations from current rates or established written organization policies. If grant funds are requested to pay the salary and related costs for a current employee of a court or other unit of government, the applicant should explain why this would not constitute a supplantation of State or local funds in violation of 42 U.S.C. 10706 (d)(1). An acceptable explanation may be that the position to be filled is a new one established in conjunction with the project or that the grant funds will be supporting only the portion of the employee's time that will be dedicated to new or additional duties related to the project.

2. Fringe Benefit Computation

The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented as well as a description of the elements included in the determination of the percentage rate.

3. Consultant/Contractual Services

The applicant should describe each type of service to be provided. The basis for compensation rates and the method for selection should also be included.

Rates for consultant services must be set in accordance with section XI.H.2.c.

4. Travel

Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose for travel should also be included in the narrative.

5. Equipment

Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the objectives of the project. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases for automatic data processing equipment must comply with section XI.H.2.b.

6. Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the details supporting the total requested for this expenditure category.

7. Construction

Construction expenses are prohibited except for the limited purposes set forth in section X.G.2. Any allowable construction or renovation expense should be described in detail in the budget narrative.

8. Telephone

Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used in developing the monthly and long distance estimates.

9. Postage

Anticipated postage costs for project-related mailings should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the justification material.

10. Printing/Photocopying

Anticipated costs for printing or photocopying should be included in the budget narrative. Applicants should provide the details underlying these estimates in support of the request.

11. Indirect Costs

Applicants should describe the indirect cost rates applicable to the grant in detail. These rates must be established in accordance with section XI.H.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate agreement should be attached to the application.

12. Match

The applicant should describe the source of any matching contribution and the nature of the match provided. Any additional contributions to the project should be described in this section of the budget narrative as well. If in-kind match is to be provided, the applicant should describe how the amount and value of the time, services or materials actually contributed will be documented. Applicants should be aware that the time spent by participants in education courses does not qualify as in-kind match. (Samples of forms used by current grantees to track in-kind match are available from the Institute upon request.)

Applicants that do not contemplate making matching contributions continuously throughout the course of the project or on a task-by-task basis must provide a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. (See sections III.G., VIII.B., X.B. and XI.D.1.)

E. Submission Requirements

1. An application package containing the application, an original signature on FORM A (and on FORM B, if the application is from a State or local court), and four photocopies of the application package must be sent by first class or overnight mail, or by courier no later than May 13, 1992. A postmark or courier receipt will constitute evidence of the submission date. Please mark APPLICATION on all application package envelopes and send to: State Justice Institute, 1650 King Street, suite 600, Alexandria, Virginia 22314.

Receipt of each proposal will be acknowledged in writing. Extensions of the deadline for receipt of applications will not be granted.

2. Applicants invited to submit more than one application may include material that would be identical in each application in a cover letter, and incorporate that material by reference in each application. The incorporated material will be counted against the 25-page limit for the program narrative. A copy of the cover letter should be attached to each copy of each application.

3. It is preferable for letters of cooperation or support to be appended to the application when it is submitted. However, any letters received prior to the meeting of the Board of Directors at which the application is considered will be brought to the attention of the Board.

VIII. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter inviting submission of a formal application.

B. Selection Criteria

1. All applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

a. The soundness of the methodology;

b. The appropriateness of the proposed evaluation design;

c. The qualifications of the project's staff;

d. The applicant's management plan and organizational capabilities;

e. The reasonableness of the proposed budget;

f. The demonstration of need for the project;

g. The products and benefits resulting from the project;

h. The demonstration of cooperation and support of other agencies that may be affected by the project;

i. The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B., and

j. The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

2. "Single jurisdiction" applications submitted pursuant to section II.C. will also be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B. and on the special requirements listed in section II.C.1.

3. In determining which applicants to fund, the Institute will also consider the applicant's standing in relation to the statutory priorities discussed in section IV; the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's match; and the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements.

C. Review and Approval Process

Applications will be reviewed competitively by the Board of Directors. The Institute staff will prepare a narrative summary of each application, and a rating sheet assigning points for each relevant selection criterion. When necessary, applications may also be reviewed by outside experts. Committees of the Board will review applications within assigned program categories and prepare recommendations to the full Board. The full Board of Directors will then decide which applications to approve for a grant. The decision to award a grant is solely that of the Board of Directors.

Awards approved by the Board will be signed by the Chairman of the Board on behalf of the Institute.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

The Institute will send written notice to applicants concerning all Board decisions to approve or deny their respective applications and the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but does not prohibit resubmission of a concept paper based on that application in a subsequent round of funding. The Institute will also notify the designated State contact listed in appendix I when grants are approved by the Board to support projects that will be conducted by or involve courts in their State.

F. Response to Notification of Approval

Applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) has not been submitted to the Institute within 30 days after notification, the approval will be automatically rescinded and the application presented to the Board for reconsideration.

IX. Renewal Funding Procedures and Requirements

The Institute recognizes two types of renewal funding—"continuation grants" and "on-going support grants." Pursuant to the procedures and requirements set forth below, the Board may, in its discretion and subject to the availability of funds, consider requests for renewal funding at times other than those set for new projects in Sections VI. and VII. The Board of Directors anticipates allocating no more than 25% of available grant funds for FY 1992 for renewal grants. Applicants should be aware that this is less than the level of renewal funding approved in recent fiscal years.

A. Continuation Grants

1. Purpose and Scope

Continuation grants are intended to support projects with a limited duration that involve the same type of activities as the previous project. They are intended to enhance the specific program or service produced or established during the prior grant period. They may be used, for example, when a project is divided into two or more sequential phases, for secondary analysis of data obtained in an Institute-supported research project, or for more extensive testing of an innovative technology, procedure, or program developed with SJI grant support.

In order for a project to be considered for continuation funding, the grantee must have completed the project tasks and met all grant requirements and conditions in a timely manner, absent extenuating circumstances or prior Institute approval of changes to the project design. Continuation grants are not intended to provide support for a project for which the grantee has underestimated the amount of time or funds needed to accomplish the project tasks.

2. Application Procedures—Letters of Intent

In lieu of a concept paper, a grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and must contain a concise but thorough explanation of the need for continuation; an estimate of the funds to be requested; and a brief description of anticipated changes in scope, focus or audience of the project.

b. Letters of intent will not be reviewed competitively. Institute staff will review the proposed activities for the next project period and, within 30 days of receiving a letter of intent, inform the grantee of specific issues to be addressed in the continuation application and the date by which the application for a continuation grant must be submitted.

3. Application Format

An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of an application for a continuation grant should address:

a. *Need for Continuation.* Explain why continuation of the project is necessary to achieve the goals of the project, and how the continuation will benefit the participating courts or the courts community generally. That is, to what extent will the goals and objectives of the project be unfulfilled if the project is not continued, and conversely, how will the findings or results of the project be enhanced by continuing the project?

b. *Report of Current Project Activities.* Discuss the status of all activities conducted during the previous project period, identify any activities that were not completed, and explain why.

c. *Evaluation Findings.* Describe the key findings or recommendations resulting from the evaluation of the project, if they are available, and explain how they will be addressed during the proposed continuation. If the findings are not yet available, provide the date by which they will be submitted to the Institute.

d. *Tasks, Methods, Staff and Grantee Capability.* Describe fully any changes in the tasks to be performed, the methods to be used, the products of the project, how and to whom those products will be disseminated, the assigned staff, or the grantee's organizational capacity.

e. *Task Schedule.* Present a detailed task schedule and time line for the next project period.

f. *Other Sources of Support.* Indicate why other sources of support are inadequate, inappropriate or unavailable.

g. *Budget and Budget Narrative.* Provide a complete budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered.

4. References to Previously Submitted Material

An application for a continuation grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

5. Submission Requirements, Review and Approval Process, and Notification of Decision

The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for a continuation grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

B. On-going Support Grants

1. Purpose and Scope

On-going support grants are intended to support projects that are national in scope and that provide the State courts with services, programs or products for which there is a continuing important need. An on-going support grant may also be used to fund longitudinal research that directly benefits the State courts. On-going support grants are subject to the limits on size and duration set forth in V.B.2 and V.C.2. A project is eligible for consideration for an on-going support grant if:

a. The project is supported by and has been evaluated under a grant from the Institute;

b. The project is national in scope and provides a significant benefit to the State courts;

c. There is a continuing important need for the services, programs or products provided by the project as indicated by the level of use and support by members of the court community;

d. The project is accomplishing its objectives in an effective and efficient manner; and

e. It is likely that the service or program provided by the project would be curtailed or significantly reduced without Institute support.

Each project supported by an on-going support grant must include an evaluation component assessing its effectiveness and operation throughout the grant period. The evaluation should be independent, but may be designed collaboratively by the evaluator and the grantee. The design should call for regular feedback from the evaluator to the grantee throughout the project period concerning recommendations for mid-course corrections or improvement of the project, as well as periodic reports to the Institute at relevant points in the project.

An interim evaluation report must be submitted 18 months into the grant period. The decision to obligate Institute funds to support the third year of the project will be based on the interim evaluation findings and the applicant's response to any deficiencies noted in the report.

A final evaluation assessing the effectiveness, operation of, and continuing need for the project must be submitted 90 days before the end of the three-year project period.

In addition, a detailed annual task schedule must be submitted not later than 45 days before the end of the first and second years of the grant period, along with an explanation of any necessary revisions in the projected costs for the remainder of the project period. (See also section IX.B.3.h.)

2. Application Procedures—Letters of Intent

The Board will consider awarding an on-going support grant for a period of up to 36 months. The total amount of the grant will be fixed at the time of the initial award.

Funds ordinarily will be made available in annual increments as specified in section V.B.2.

In lieu of a concept paper, a grantee seeking an on-going support grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period. The letter of intent should be in the same format as that prescribed for continuation grants in section IX.A.2.a.

3. Application Procedures and Format

An application for an on-going support grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of applications for on-going support grants should address:

a. *Description of Need for and Benefits of the Project.* Provide a detailed discussion of the benefits provided by the project to the State courts around the country, including the degree to which State courts, State court judges, or State court managers and personnel are using the services or programs provided by the project.

b. *Demonstration of Court Support.* Demonstrate support for the continuation of the project from the courts community.

c. *Report on Current Project Activities.* Discuss the extent to which the project has met its goals and objectives, identify any activities that have not been completed, and explain why.

d. *Evaluation Findings.* Attach a copy of the final evaluation report regarding the effectiveness and operation of the project, specify the key findings or recommendations resulting from the evaluation, and explain how they will be addressed during the proposed renewal period.

e. *Tasks, Methods, Staff and Grantee Capability.* Describe fully any changes in the tasks to be performed; the methods to be used; the products of the project; how and to whom those products will be disseminated; the assigned staff; and the grantee's organizational capacity.

f. *Task Schedule.* Present a general schedule for the full proposed project period and a detailed task schedule for the first year of the proposed new project period.

g. *Other Sources of Support.* Indicate why other sources of support are inadequate, inappropriate or unavailable.

h. *Budget and Budget Narrative.* Provide a complete three-year budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases

in the scope of activities or services to be rendered. A complete budget narrative should be provided for each year, or portion of a year, for which grant support is requested.

Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. The budget should provide for realistic cost-of-living and staff salary increases over the course of the requested project period. Applicants should be aware that the Institute is unlikely to approve a supplemental budget increase for an on-going support grant in the absence of well-documented, unanticipated factors that clearly justify the requested increase.

4. References to Previously Submitted Material

An application for an on-going support grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

5. Submission Requirements, Review and Approval Process, and Notification of Decision

The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for an on-going support grant. Such applications will be rated on the selection criteria set forth in section VIII.B.

The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

X. Compliance Requirements

The State Justice Institute Act (Pub. L. 98–620, as amended) contains limitations and conditions on grants, contracts and cooperative agreements of which applicants and recipients should be aware. In addition to eligibility requirements which must be met to be considered for an award from the Institute, all applicants should be aware of and all recipients will be responsible for ensuring compliance with the following:

A. State and Local Court Systems

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The latter shall receive, administer, and be accountable for all funds awarded to such courts. 42 U.S.C. 10705(b)(4). The Appendix to this guideline lists the agencies, councils and contact persons designated to administer Institute awards to the State and local courts.

B. Matching Requirements

1. All awards to courts or other units of State or local government (not including publicly supported institutions of higher education) require a match from private or public sources of not less than 50 percent of the total amount of the Institute's award. For example, if the total cost of a project is anticipated to be $150,000, a State court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as a match. A cash match, non-cash match, or both may be provided, but the Institute will give preference to those applicants who provide a cash match to the Institute's award. (For a further definition of match, see section III.G.)

The requirement to provide match may be waived in exceptionally rare circumstances upon approval of the Chief Justice of the highest court in the State and a majority of the Board of Directors. 42 U.S.C. 10705(d) (as amended).

2. Other eligible recipients of Institute funds are not required to provide a match, but are encouraged to contribute to meeting the costs of the project. In instances where a cash match is proposed, the grantee is responsible for ensuring that the total amount proposed is actually contributed. If a proposed cash match contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see section VIII.B. above and XI.D).

C. Conflict of Interest

Personnel and other officials connected with Institute-funded programs shall adhere to the following requirements:

1. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where to his/her knowledge he/she or his/her immediate family, partners, organization other than a public agency in which he/she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

2. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

a. Using an official position for private gain; or

b. Affecting adversely the confidence of the public in the integrity of the Institute program.

3. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

D. Lobbying

Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

E. Political Activities

No recipient shall contribute or make available Institute funds, program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Finally, officers and employees of recipients shall not intentionally identify the Institute or

recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

F. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

G. Prohibition Against Litigation Support

No funds made available by the Institute may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

H. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

1. To supplant State or local funds supporting a program or activity;
2. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or
3. Solely to purchase equipment.

I. Confidentiality of Information

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

J. Human Research Protection

All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

K. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds. Recipients of Institute funds must immediately take any measures necessary to effectuate this provision.

L. Reporting Requirements

Recipients of Institute funds, other than scholarships awarded under section II.B.2.b.v., shall submit Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). Two copies of each report must be sent. The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

The quarterly financial status report shall be submitted in accordance with section XI.G.2. of this guideline.

M. Audit

Each recipient must provide for an annual fiscal audit. (See section XI.J. of this guideline for the requirements of such audits.)

Accounting principles employed in recording transactions and preparing financial statements must be based upon generally accepted accounting principles (GAAP).

N. Suspension of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, Institute guidelines, or the terms and conditions of the award. 42 U.S.C. 10708(a).

O. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

P. Original Material

All products prepared as the result of Institute-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

Q. Acknowledgment and Disclaimer

Recipients of Institute funds shall acknowledge prominently on all products developed with grant funds that support was received from the Institute. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless another placement is approved in writing by the Institute.

Recipients also shall display the following disclaimer on all grant products:

> This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.

R. Institute Approval of Grant Products

No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of the Institute. Grantees shall submit a final draft of each such product to the Institute for review and approval prior to submitting that product for publication or reproduction.

S. Distribution of Grant Products to State Libraries

Grantees shall send one copy of each final product developed with grant funds to the library established in each State to collect materials prepared with Institute support. (A list of these libraries is contained in Appendix II).

T. Copyrights

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

U. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).

V. Charges for Grant-Related Products

When Institute funds fully cover the cost of developing, producing, and disseminating a product, e.g., a document or software, the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, and dissemination costs, the grantee may recover its costs for reproducing and disseminating the material to those requesting it. See section XI.F. for requirements regarding project-related income.

W. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, a recipient shall submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

XI. Financial Requirements

A. Accounting Systems and Financial Records

All grantees, subgrantees, contractors and other organizations directly or indirectly receiving Institute funds are required to establish and maintain accounting systems and financial records to accurately account for funds they receive. These records shall include total program costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget.

1. Purpose

The purpose of this section is to establish accounting system requirements and to offer guidance on procedures which will assist all grantees/subgrantees in:

a. Complying with the statutory requirements for the awarding, disbursement, and accounting of funds;

b. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;

c. Generating financial data which can be used in the planning, management and control of programs; and

d. Facilitating an effective audit of funded programs and projects.

2. References

Except where inconsistent with specific provisions of this Guideline, the following regulations, directives and reports are applicable to Institute grants and cooperative agreements. These materials supplement the requirements of this section for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied.

a. *Office of Management and Budget (OMB) Circular A–21,* Cost Principles for Educational Institutions.

b. *Office of Management and Budget (OMB) Circular A–87,* Cost Principles for State and Local Governments.

c. *Office of Management and Budget (OMB) Circular A–88 (revised),* Indirect Cost Rates, Audit and Audit Follow-up at Educational Institutions.

d. *Office of Management and Budget (OMB) Circular A–102,* Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

e. *Office of Management and Budget (OMB) Circular A–110,* Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations.

f. *Office of Management and Budget (OMB) Circular A–128,* Audits of State and Local Governments.

g. *Office of Management and Budget (OMB) Circular A–122,* Cost Principles for Non-profit Organizations.

B. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving direct awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records and refunding expenditures disallowed by audits.

2. Responsibilities of State Supreme Court

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council.

The State Supreme Court shall receive all Institute funds awarded to such courts and shall be responsible for assuring proper administration of Institute funds. The State Supreme Court is responsible for all aspects of the project, including proper accounting and financial recordkeeping by the subgrantee. The responsibilities include:

a. *Reviewing Financial Operations.* The State Supreme Court should be familiar with, and periodically monitor, its subgrantees' financial operations, records system and procedures. Particular attention should be directed to the maintenance of current financial data.

b. *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court *OR* evidenced by report forms duly filed by the subgrantee. Non-Institute contributions applied to projects by subgrantees should likewise be recorded, as should any project income resulting from program operations.

c. *Budgeting and Budget Review.* The State Supreme Court should ensure that

each subgrantee prepares an adequate budget as the basis for its award commitment. The detail of each project budget should be maintained on file by the State Supreme Court.

d. *Accounting for Non-Institute Contributions.* The State Supreme Court will ensure, in those instances where subgrantees are required to furnish non-Institute matching funds, that the requirements and limitations of this guideline are applied to such funds.

e. *Audit Requirement.* The State Supreme Court is required to ensure that subgrantees have met the necessary audit requirements as set forth by the Institute (see sections X.J. and XI.J).

f. *Reporting Irregularities.* The State Supreme Court and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

C. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls for itself and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system is considered to be one which:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

D. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute shall be structured and executed on a "total project cost" basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget shall be the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the obligation of Institute funds. However, the full matching share must be obligated by the end of the award period. Grantees that do not contemplate making matching contributions continuously throughout the course of a project or on a task-by-task basis, are required to submit a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. In instances where a proposed cash match is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement.

2. Records for Match

All grantees must maintain records which clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does the Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (See Section XI.B.2.)

E. Maintenance and Retention of Records

All financial records, supporting documents, statistical records and all other records pertinent to grants, subgrants, cooperative agreements or contracts under grants shall be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this chapter.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports will be required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of submission of the annual expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and subgrantees must give any authorized representative of the Institute access to and the right to examine all records, books, papers, and documents related to an Institute grant.

F. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income. The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A State and any agency or instrumentality of a State including State institutions of higher education and State hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are direct grantees must refund any

interest earned. Grantees shall so order their affairs to ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the project provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees shall be used to pay project-related costs not covered by the grant, or to reduce the amount of grant funds needed to support the project. Registration and tuition fees may be used for other purposes only with the prior written approval of the Institute.

4. Other

Other project income shall be treated in accordance with disposition instructions set forth in the project's terms and conditions.

G. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a "Check-Issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

b. *Termination of Advance and Reimbursement Funding.* When a grantee organization receiving cash advances from the Institute:

i. Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

ii. Engages in the improper award and administration of subgrants or contracts; or

iii. Is unable to submit reliable and/or timely reports, the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by the use of the Institute check method to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute reserves the right to suspend reimbursement payments until the deficiencies are corrected.

c. *Principle of Minimum Cash on Hand.* Recipient organizations should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days. Idle funds in the hands of subgrantees will impair the goals of good cash management.

2. Financial Reporting

In order to obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees of these funds submit timely reports for review.

Two copies of the Financial Status Report are required from all grantees, other than recipients of scholarships under section II.B.2.b.v., for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, and any other fund sources included in the approved project budget. The report contains information on obligations as well as outlays. A copy of the Financial Status Report, along with instructions for its preparation, will be included in the official Institute Award package. In circumstances where an organization requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, in support of the Request for Advance or Reimbursement.

3. Consequences of Non-Compliance With Submission Requirements

Failure of the grantee organization to submit required financial and program reports may result in a suspension of grant payments or revocation of the grant award.

H. Allowability of Costs

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability shall be determined in accordance with the principles set forth in OMB Circulars A–87, Cost Principles for State and Local Governments; A–21, Cost Principles Applicable to Grants and Contracts with Educational Institutions; and A–122, Cost Principles for Non-Profit Organizations. No costs may be recovered to liquidate obligations which are incurred after the approved grant period.

2. Costs Requiring Prior Approval

a. *Preagreement Costs.* The written prior approval of the Institute is required for costs which are considered necessary to the project but occur prior to the award date of the grant.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or the software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $300 a day.

3. *Travel Costs.* Transportation and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established written travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. Institute funds shall not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.

4. *Indirect Costs.* These are costs of an organization that are not readily assignable to a particular project, but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. It is the policy of the Institute that all costs should be budgeted directly; however, if a recipient has an indirect cost rate approved by a Federal agency as set forth below, the Institute will accept that rate.

a. *Approved Plan Available.* (i) The Institute will accept an indirect cost rate or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars. A copy of the approved rate agreement must be submitted to the Institute.

(ii) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally

included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

(iii) Organizations with an approved indirect cost rate, utilizing total direct costs as the base, usually exclude contracts under grants from any overhead recovery. The negotiation agreement will stipulate that contracts are excluded from the base for overhead recovery.

b. *Establishment of Indirect Cost Rates.* In order to be reimbursed for indirect costs, a grantee or organization must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute. The proposal must be submitted in a timely manner (within three months after the start of the grant period) to assure recovery of the full amount of allowable indirect costs, and it must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved.

c. *No Approved Plan.* If an indirect cost proposal for recovery of actual indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received. This policy is effective for all grant awards.

I. Procurement and Property Management Standards

1. Procurement Standards

For State and local governments, the Institute is adopting the standards set forth in Attachment O of OMB Circular A–102. Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of OMB Circular A–110.

2. Property Management Standards.

The property management standards as prescribed in Attachment N of OMB Circulars A–102 and A–110 shall be applicable to all grantees and subgrantees of Institute funds except as provided in section X.O.

All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

J. Audit Requirements

1. Audit Objectives

Grants and other agreements are awarded subject to conditions of fiscal, program and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the grantee's or subgrantee's administration of grant funds and required non-Institute contributions for the purpose of determining whether the recipient has:

a. Established an accounting system integrated with adequate internal fiscal and management controls to provide full accountability for revenues, expenditures, assets, and liabilities;

b. Prepared financial statements which are presented fairly, in accordance with generally accepted accounting principles;

c. Prepared Institute financial reports (including Financial Status Reports, Cash Reports, and Requests for Advances and Reimbursements) which contain accurate and reliable financial data, and are presented in accordance with prescribed procedures; and

d. Expended Institute funds in accordance with the terms of applicable agreements and those provisions of Federal law or Institute regulations that could have a material effect on the financial statements or on the awards tested.

2. Implementation

Each grantee (including a State or local court receiving a subgrant from the State Supreme Court) shall provide for an annual fiscal audit. The audit may be of the entire grantee organization (e.g., a university) or of the specific project funded by the Institute. The audit shall be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. The audit shall be conducted in compliance with generally accepted auditing standards established by the American Institute of Certified Public Accountants. A written report shall be prepared upon completion of the audit. Grantees are responsible for submitting copies of the reports to the Institute within thirty days after the acceptance of the report by the grantee, for each year that there is financial activity involving Institute funds.

Grantees who receive funds from a Federal agency and who satisfy audit requirements of the cognizant Federal agency, should submit a copy of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section. Cognizant Federal agencies do not send reports to the Institute. Therefore, each grantee must send this report directly to the Institute.

Audit reports from nonprofit organizations which do not receive Federal funds, and which decide to perform an audit of the entire organization, shall include a supplemental schedule depicting a project-by-project summary of Institute grant activity for the audit period. At a minimum, this summary should include the grant award number, project title, award amount, payments received, expenditures made and balances remaining. The auditors should also conduct adequate tests to ensure that the audit objectives listed in sections XI.J.1.c. and d. above have been satisfied.

3. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grant recipient shall have policies and procedures for acting on audit recommendations by designating officials responsible for: follow-up, maintaining a record of the actions taken on recommendations and time schedules, responding to and acting on audit recommendations, and submitting periodic reports to the Institute on recommendations and actions taken.

4. Consequences of Non-Resolution of Audit Issues

It is the general policy of the State Justice Institute not to make new grant awards to an applicant having an unresolved audit report involving Institute awards. Failure of the grantee organization to resolve audit questions may also result in the suspension of payments for active Institute grants to that organization.

K. Close-Out of Grants

1. Definition

Close-out is a process by which the Institute determines that all applicable administrative and financial actions and all required work of the grant have been completed by both the grantee and the Institute.

2. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (revised end date), the following documents must be submitted to the Institute by a grantee other than a recipient of a scholarship under section II.B.2.b.v.

a. *Financial Status Report.* The final report of expenditures must have no unliquidated obligations and must

indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day closeout period. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final financial status report.

b. *Final Progress Report.* This report should describe the project activities during the final calendar quarter of the project and the closeout period, including to whom project products have been disseminated; specify whether all the objectives set forth in the approved application or an approved adjustment thereto have been met; and, if any of the objectives have not been met explain the reasons therefor.

XII. Grant Adjustments

All requests for program or budget adjustments requiring Institute approval must be submitted in a timely manner by the project director. All requests for changes from the approved application will be carefully reviewed for both consistency with this guideline and the enhancement of grant goals and objectives.

A. Grant Adjustments Requiring Prior Written Approval

There are several types of grant adjustments which require the prior written approval of the Institute. Examples of these adjustments include:

1. Budget revisions among direct cost categories which, individually or in the aggregate, exceed or are expected to exceed 5 percent of the approved budget. For the purposes of this section, the Institute will view budget revisions cumulatively.

2. A change in the scope of work to be performed or the objectives of the project (see section XII.D.).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see section XII.E.).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see sections XII.F. and G.).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section X.Q.).

8. A successor in interest or name change agreements.

9. A transfer or contracting out of grant-supported activities (see section XII.H.).

10. A transfer of the grant to another recipient.

11. Preagreement costs, the purchase of automated data processing equipment and software, and consultant rates, as specified in section XI.H.2.

B. Request for Grant Adjustments

All grantees and subgrantees must promptly notify the SJI program managers, in writing, of events or proposed changes which may require an adjustment to the approved application. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the SJI program managers determine would help the Institute's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his/her designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

A grantee/subgrantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager. Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute.

E. Date Changes

A request to change or extend the grant period must be made 30 days in advance of the end date of the grant. A request to change or extend the deadline for the final financial report or final progress report must be made 30 days in advance of the report deadline (see section XI.K.2.).

F. Temporary Absence of the Project Director

Whenever absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

A principal activity of the grant-supported project shall not be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements should be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, are to be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

State Justice Institute Board of Directors

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David I. Tevelin, Executive Director (ex officio)

David I. Tevelin,

Executive Director.

Appendix I—Contact Persons for State Agencies Administering Institute Grants to State and Local Courts

Hon. Leslie G. Johnson, Administrative Director, Administrative Office of the Courts, 817 South Court Street, Montgomery, Alabama 36130, (205) 834–7990
Mr. Arthur H. Snowden II, Administrative Director, Alaska Court System, 303 K Street, Anchorage, Alaska 99501, (907) 264–0547
Mr. William L. McDonald, Administrative Director, Supreme Court of Arizona, 1501 West Washington Street, suite 411, Phoenix, Arizona 85007–3330, (602) 255–4359
Mr. James D. Gingerich, Executive Secretary, Arkansas Judicial Department, Justice Building, Little Rock, Arkansas 72201, (501) 371–2295
Mr. Robert W. Page, Jr., Acting Administrator, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, California 94107, (415) 396–9100
Mr. James D. Thomas, State Court Administrator, Colorado Judicial Department, 1301 Pennsylvania Street, suite 300, Denver, Colorado 80203–2416, (303) 861–1111, ext. 585
Ms. Faith A. Mandell, Director, External Affairs, Office of the Chief Court Administrator, Drawer N, Station A, Hartford, Connecticut 06106, (203) 566–0210
Mr. Lowell Groundland, Director, Administrative Office of the Courts, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware 19801, (302) 571–2480
Mr. Ulysses Hammond, Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, NW., Washington, DC 20001, (202) 879–1700
Mr. Kenneth Palmer, State Courts Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, Florida 32399–1900, (904) 488–8621
Mr. Robert L. Doss, Jr., Administrative Director of the Courts, The Judicial Council of Georgia, 244 Washington Street, SW., suite 500, Atlanta, Georgia 30334, (404) 656–5171
Mr. Perry C. Taitano, Administrative Director, Superior Court of Guam, Judiciary Building, 110 West O'Brien Drive, Agana, Guam 96920, 011 (671) 472–8961 through 8968
Dr. Irwin I. Tanaka, Administrative Director of Courts, The Judiciary, Post Office Box 2560, Honolulu, Hawaii 96804, (808) 548–4605
Mr. Carl F. Bianchi, Administrative Director of the Courts, Supreme Court Building, 451 West State Street, Boise, Idaho 83720, (208) 334–2246
Mr. William M. Madden, Acting Director, Administrative Office of the Courts, 30 N. Michigan Avenue, suite 2017, Chicago, Illinois 60602, (312) 793–3250
Mr. Bruce A. Kotzan, Executive Director, Supreme Court of Indiana, State House, room 323, Indianapolis, Indiana 46204, (317) 232–2542
Mr. William J. O'Brien, State Court Administrator, Supreme Court of Iowa, State House, Des Moines, Iowa 50319, (515) 281–5241
Dr. Howard P. Schwartz, Judicial Administrator, Kansas Judicial Center, 301 West 10th Street, Topeka, Kansas 66612, (923) 296–4873
Ms. Laura Stammel, Assistant Director, Administrative Office of the Courts, 100 Mill Creek Park, Frankfort, Kentucky 40601, (502) 564–2350
Dr. Hugh M. Collins, Judicial Administrator, Supreme Court of Louisiana, 301 Loyola Avenue, Room 109, New Orleans, Louisiana 70112–1887, (504) 568–5747
Mr. Dana R. Baggett, State Court Administrator, Administrative Office of the Courts, P.O. Box 4820, Downtown Station, Portland, Maine 04112, (207) 879–4792
Ms. Deborah A. Unitus, Assistant State Court Administrator, Technical and Information Services, Administrative Office of the Courts, P.O. Box 431, Annapolis, Maryland 21404, (301) 974–2353
Honorable Arthur M. Mason, Chief Administrative Justice, The Trial Court, Commonwealth of Massachusetts, 317 New Courthouse, Boston, Massachusetts 02108, (617) 725–8787
Ms. Marilyn K. Hall, State Court Administrator, Michigan Supreme Court, P.O. Box 30048, 611 West Ottawa Street, Lansing, Michigan 48909, (517) 373–0131
Ms. Sue K. Dosal, State Court Administrator, Supreme Court of Minnesota, 230 State Capitol, St. Paul, Minnesota 55155, (617) 296–2474
Ms. Krista Johns, Director, Center for Court Education and Continuing Studies, Box 879, Oxford, Mississippi 38677, (601) 232–5955
Mr. Ron Larkin, Director of Operations, Office of the State Court Administrator, 1105 R Southwest Blvd., Jefferson City, Missouri 65109, (314) 751–3585
Mr. R. James Oppedahl, State Court Administrator, Montana Supreme Court, Justice Building, Room 315, 215 North Sanders, Helena, Montana 59620–3001, (406) 444–2621
Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, State Capitol Building, Room 1220, Lincoln, Nebraska 68509, (404) 471–2643
Mr. Donald J. Mello, Court Administrator, Administrative Office of the Courts, Capitol Complex, Carson City, Nevada 89710, (702) 885–5076
Mr. James F. Lynch, State Court Administrator, Supreme Court of New Hampshire, Frank Rowe Kenison Building, Concord, New Hampshire 03301, (603) 271–2419
Mr. Robert Lipscher, Administrative Director, Administrative Office of the Courts, CN–037, RJH Justice Complex, Trenton, New Jersey 08625, (609) 984–0275
Mr. Matthew T. Crosson, Chief Administrator of the Courts, Office of Court Administration, 270 Broadway, New York, New York 10007, (212) 587–2004
Mr. Robert L. Lovato, State Court Administrator, Administrative Office of the Courts, Supreme Court of New Mexico, Supreme Court Building, Room 25, Sante Fe, New Mexico 87503, (505) 827–4800
Mr. Franklin E. Freeman, Jr., Administrative Director, Administrative Office of the Courts, Post Office Box 2448, Raleigh, North Carolina 27602, (929) 733–7106/7107
Mr. William G. Bohn, State Court Administrator, Supreme Court of North Dakota, State Capitol Building, Bismarck, North Dakota 58505, (701) 224–4216
Mr. Stephan W. Stover, Administrative Director of the Courts, Supreme Court of Ohio, State Office Tower, 30 East Broad Street, Columbus, Ohio 43266–0419, (614) 466–2653
Mr. Howard W. Conyers, Administrative Director, Administrative Office of the Courts, 1925 N. Stiles, Suite 305, Oklahoma City, Oklahoma 73105, (405) 521–2450
Mr. R. William Linden, Jr., State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, Oregon 97310, (503) 378–6046
Mr. Thomas B. Darr, Director for Legislative Affairs, Communications and Administration, 5035 Ritter Road, Mechanicsburg, Pennsylvania 17055, (717) 795–2000
Mr. Matthew J. Smith, State Court Administrator, Supreme Court of Rhode Island, 250 Benefit Street, Providence, Rhode Island 02903, (401) 277–3263 or 277–3272
Mr. Louis L. Rosen, Director, South Carolina Court Administration, Post Office Box 50447, Columbia, South Carolina 29250, (803) 758–2961
Hon. Robert A. Miller, Chief Justice, Supreme Court of South Dakota, 500 East Capitol Avenue, Pierre, South Dakota 57501, (605) 773–4885
Mr. Cletus W. McWilliams, Executive Secretary, Supreme Court of Tennessee, Supreme Court Building, Room 422, Nashville, Tennessee 37219, (615) 741–2687
Mr. C. Raymond Judice, Administrative Director, Office of Court Administration of the Texas Judicial System, Post Office Box 12066, Austin, Texas 78711, (512) 463–1625
Mr. William C. Vickrey, State Court Administrator, Administrative Office of the Courts, 230 South 500 East, Salt Lake City, Utah 84102, (801) 533–6371
Mr. Thomas J. Lehner, Court Administrator, Supreme Court of Vermont, 111 State Street, Montpelier, Vermont 05602, (802) 828–3281
Ms. Viola E. Smith, Clerk of the Court, Administrator, Territorial Court of the

Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774–6680, ext. 248
Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, Administrative Offices, 100 North Ninth Street, 3rd Floor, Richmond, Virginia 23219, (804) 786–6455
Ms. Mary C. McQueen, Administrator for the Courts, Supreme Court of Washington, Highways-Licensing Building, 6th Floor, 12th & Washington, Olympia, Washington 98504, (206) 753–5780
Mr. Ted J. Philyaw, Administrative Director of the Courts, Administrative Office, 402–E State Capitol, Charleston, West Virginia 25305, (304) 348–0145
Mr. J. Denis Moran, Director of State Courts, Post Office Box 1688, Madison, Wisconsin 53701–1688, (608) 266–6828
Mr. Robert L. Duncan, Court Coordinator, Supreme Court Building, Cheyenne, Wyoming 82002, (307) 777–7581

Appendix II—SJI In-State Libraries Designated Sites and Contacts

(August 1991)

State: Alabama
Location: Supreme Court Library
Contact: Mr. William C. Younger, State Law Librarian, Alabama Supreme Court Bldg., 445 Dexter Avenue, Montgomery, Alabama 36130, (205) 242–4347
State: Alaska
Location: Anchorage Law Library
Contact: Ms. Cynthia S. Petumenos, State Law Librarian, Alaska Court Libraries, 303 K Street, Anchorage, Alaska 99501, (907) 264–0583
State: Arizona
Location: State Law Library
Contact: Ms. Sharon Womack, Director, Department of Library & Archives, State Capitol, 1700 West Washington, Phoenix, Arizona 85007, (602) 542–4035
State: Arkansas
Location: Administrative Office of the Courts
Contact: Mr. James D. Gingerich, Director, Supreme Court of Arkansas, Administrative Office of the Courts, Justice Building, 625 Marshall, Little Rock, Arkansas 72201–1078, (501) 376–6655
State: California
Location: Administrative Office of the Courts
Contact: Mr. Robert W. Page, Jr., Acting Director, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, California 94107, (415) 396–9100
State: Colorado
Location: Supreme Court Library
Contact: Ms. Frances Campbell, Supreme Court Law Librarian, Colorado State Judicial Building, 2 East 14th Avenue, Denver, Colorado 80203, (303) 837–3720
State: Connecticut
Location: State Library
Contact: Mr. Richard Akeroyd, State Librarian, 231 Capital Avenue, Hartford, Connecticut 06106, (203) 566–4301
State: Delaware
Location: Administrative Office of the Courts
Contact: Mr. Michael E. McLaughlin, Deputy Director, Administrative Office of the Courts, Carvel State Office Building, 820 North French Street, 11th Floor, P.O. Box 8911, Wilmington, Delaware 19801, (302) 571–2480
State: District of Columbia
Location: Executive Office, District of Columbia Courts
Contact: Mr. Ulysses Hammond, Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, NW., Washington, DC 20001, (202) 879–1700
State: Florida
Location: Administrative Office of the Courts
Contact: Mr. Kenneth Palmer, State Court Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, Florida 32399–1900, (904) 488–8621
State: Georgia
Location: Administrative Office of the Courts
Contact: Mr. Robert L. Doss, Jr., Director, Administrative Office of the Courts, The Judicial Council of Georgia, 244 Washington Street, S.W., Suite 550, Atlanta, Georgia 30334, (404) 656–5171
State: Hawaii
Location: Supreme Court Library
Contact: Ms. Ann Koto, Acting Law Librarian, Supreme Court Law Library, P.O. Box 2560, Honolulu, Hawaii 96804, (808) 548–4605
State: Idaho
Location: AOC Judicial Education Library/ State Law Library, Boise
Contact: Mr. Carl F. Bianchi, Administrative Director of the Courts for the State of Idaho, Idaho Supreme Court, 451 West State Street, Boise, Idaho 83720, (208) 334–2246
State: Indiana
Location: Supreme Court Library
Contact: Ms. Constance Matts, Supreme Court Librarian, Supreme Court Library, State House, Indianapolis, Indiana 46204, (317) 232–2557
State: Iowa
Location: Administrative Office of the Court
Contact: Mr. Jerry K. Beatty, Executive Director, Judicial Education & Planning, Administrative Office of the Courts, State Capital Building, Des Moines, Iowa 50319, (515) 281–8279
State: Kansas
Location: Supreme Court Library
Contact: Mr. Fred Knecht, Law Librarian, Kansas Supreme Court Library, 301 West 10th Street, Topeka, Kansas 66614, (913) 296–3257
State: Kentucky
Location: State Law Library
Contact: Ms. Sallie Howard, State Law Librarian, State Law Library, State Capital, Room 200–A, Frankfort, Kentucky 40601, (502) 564–4848
State: Louisiana
Location: State Law Library
Contact: Ms. Carol Billings, Director, Louisiana Law Library, 301 Loyola Avenue, New Orleans, Louisiana 70112, (504) 568–5705
State: Maine
Location: State Law and Legislative Reference Library
Contact: Ms. Lynn E. Randall, State Law Librarian, State House Station 43, Augusta, Maine 04333, (207) 289–1600
State: Maryland
Location: State Law Library
Contact: Mr. Michael S. Miller, Director, Maryland State Law Library, Court of Appeal Building, 361 Rowe Blvd., Annapolis, Maryland 21401, (301) 974–3395
State: Massachusetts
Location: Middlesex Law Library
Contact: Ms. Sandra Lindheimer, Librarian, Middlesex Law Library, Superior Court House, 40 Thorndike Street, Cambridge, Massachusetts 02141, (617) 494–4148
State: Michigan
Location: Michigan Judicial Institute
Contact: Mr. Dennis W. Catlin, Executive Director, Michigan Judicial Institute, 222 Washington Square North, P.O. Box 30205, Lansing, Michigan 48909, (517) 334–7804
State: Minnesota
Location: State Law Library (Minnesota Judicial Center)
Contact: Mr. Marvin R. Anderson, State Law Librarian, Supreme Court of Minnesota, 25 Constitution Avenue, St. Paul, Minnesota 55155, (612) 297–2084
State: Mississippi
Location: Mississippi Judicial College
Contact: Ms. Krista Johns, Director, Mississippi Judicial College, 6th Floor, 3825 Ridgewood, Jackson, Mississippi 39211, (601) 982–6590
State: Montana
Location: State Law Library
Contact: Ms. Judith Meadows, State Law Librarian, State Law Library of Montana, Justice Building, 215 North Sanders, Helena, Montana 59620, (406) 444–3660
State: Nebraska
Location: Administrative Office of the Courts
Contact: Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, Administrative Office of the Courts, P.O. Box 98910, Lincoln, Nebraska 68509–8910, (402) 471–3730
State: Nevada
Location: National Judicial College
Contact: Dean V. Robert Payant, National Judicial College, Judicial College Building, University of Nevada, Reno, Nevada 89550, (702) 784–6747
State: New Jersey
Location: New Jersey State Library
Contact: Mr. Robert L. Bland, Law Coordinator, State of New Jersey, Department of Education, State Library, 185 West State Street, CN520, Trenton, New Jersey 08625, (609) 292–6230
State: New Mexico
Location: Supreme Court Library
Contact: Mr. Thaddeus Bejnar, Librarian, Supreme Court Library, Post Office Drawer L, Santa Fe, New Mexico 87504, (505) 827–4850
State: New York
Location: Supreme Court Library
Contact: Ms. Susan M. Wood, Esq., Principal Law Librarian, New York State Supreme Court Law Library, Onondaga County Court House, Syracuse, New York 13202, (315) 435–2063

State: North Carolina
Location: Supreme Court Library
Contact: Ms. Louise Stafford, Librarian, North Carolina Supreme Court Library, P.O. Box 28006, (by courier) 500 Justice Building, 2 East Morgan Street, Raleigh, North Carolina 27601, (919) 733–3425
State: North Dakota
Location: Supreme Court Library
Contact: Ms. Marcella Kramer, Assistant Law Librarian, Supreme Court Law Library, 600 East Boulevard Avenue, 2nd Floor, Judicial Wing, Bismarck, North Dakota 58505–0530, (701) 224–2229
State: Northern Mariana Isl.
Location: Supreme Court of the Northern Mariana Islands
Contact: Honorable Jose S. Dela Cruz, Chief Justice, Supreme Court of the Northern Mariana Islands, P.O. Box 2165, Saipan, MP 96950, (670) 234–5275
State: Ohio
Location: Supreme Court Library
Contact: Mr. Paul S. Fu, Law Librarian, Supreme Court Law Library, Supreme Court of Ohio, 30 East Broad Street, Columbus, Ohio 43266–0419, (614) 466–2044
State: Oklahoma
Location: Administrative Office of the Courts
Contact: Mr. Howard W. Conyers, Director, Administrative Office of the Courts, 1915 North Stiles, Suite 305, Oklahoma City, Oklahoma 73105, (405) 521–2450
State: Oregon
Location: Administrative Office of the Courts
Contact: Mr. R. William Linden, Jr., State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, Oregon 97310, (503) 378–6046
State: Pennsylvania
Location: State Library of Pennsylvania
Contact: Ms. Betty Lutz, Head, Acquisitions Section, State Library of Pennsylvania, Technical Services, G46 Forum Building, Harrisburg, Pennsylvania 17105, (717) 787–4440
State: Puerto Rico
Location: Office of Court Administration
Contact: Mr. Alfreado Rivera-Mendoza, Esq., Director, Area of Planning and Management, Office of Court Administration, P.O. Box 917, Hato Rey, Puerto Rico 00919
State: Rhode Island
Location: State Law Library
Contact: Mr. Kendall F. Svengalis, Law Librarian, Licht Judicial Complex, 250 Benefit Street, Providence, Rhode Island 02903, (401) 277–3275
State: South Carolina
Location: Coleman Karesh Law Library (University of South Carolina School of Law)
Contact: Mr. Bruce S. Johnson, Law Librarian, Associate Professor of Law, Coleman Karesh Law Library, U.S.C. Law Center, University of South Carolina, Columbia, South Carolina 29208, (803) 777–5944
State: Tennessee
Location: Tennessee State Law Library
Contact: Ms. Donna C. Wair, Librarian, Tennessee State Law Library, Supreme Court Building, 401 Seventh Avenue N, Nashville, Tennessee 37243–0609, (615) 741–2016
State: Texas
Location: State Law Library
Contact: Ms. Kay Schleuter, Director, State Law Library, P.O. Box 12367, Austin, Texas 78711, (512) 463–1722
State: U.S. Virgin Islands
Location: Library of the Territorial Court of the Virgin Islands (St. Thomas)
Contact: Librarian, The Library, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, U.S. Virgin Islands 00804
State: Utah
Location: Utah State Judicial Administration Library
Contact: Mr. Eric Leeson, Librarian, Utah State Judicial Administration Library, 230 South 500 East, Suite 300, Salt Lake City, Utah 84102, (801) 533–6371
State: Vermont
Location: Supreme Court of Vermont
Contact: Mr. Thomas J. Lehner, Court Administrator, Supreme Court of Vermont, 111 State Street, c/o Pavilion Office Building, Montpelier, Vermont 05602, (802) 828–3278
State: Virginia
Location: Administrative Office of the Courts
Contact: Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, Administrative Offices, 100 North Ninth Street, Third Floor, Richmond, Virginia 23219, (804) 786–6455
State: Washington
Location: Washington State Law Library
Contact: Ms. Deborah Norwood, State Law Librarian, Washington State Law Library, Temple of Justice, Mail Stop AV–02, Olympia, Washington 98504–0502, (206) 357–2146
State: West Virginia
Location: Administrative Office of the Courts
Contact: Mr. Richard H. Rosswurm, Deputy Administrative Director for Judicial Education, West Virginia Supreme Court of Appeals, State Capitol, Capitol E–400, Charleston, West Virginia 25305, (304) 348–0145
State: Wisconsin
Location: State Law Library
Contact: Ms. Marcia Koslov, State Law Librarian, State Law Library, 310E State Capitol, P.O. Box 7881, Madison, Wisconsin 53707, (608) 266–1424
State: Wyoming
Location: Wyoming State Law Library
Contact: Ms. Kathy Carlson, Law Librarian, Wyoming State Law Library, Supreme Court Building, Cheyenne, Wyoming 82002, (307) 777–7509

Information about SJI-supported judicial education projects and products may also be obtained from:

Dr. John K. Hudzik, Project Director, Judicial Education Reference, Information and Technical Transfer Project (JERITT), Michigan State University, 560 Baker Hall, East Lansing, Michigan 48824

(Form S1)

Appendix III—State Justice Institute Judicial Education Scholarship

Application

1. Applicant
a. Name _____
b. Title _____
c. Years of Service as a Judge _____
d. Anticipated Future Years of Service as a Judge _____

2. Address
a. Street/P.O. Box _____
b. City_____ State_____ Zip_____
c. Telephone Number (O)_____
(H)_____
d. Congressional District _____

3. Type of Court: (Circle appropriate letter)
a. Court of Last Resort
b. Intermediate Appellate Court
c. General jurisdiction Trial Court
d. Limited Jurisdiction Trial Court
e. Other_____
(Specify)

4. Educational Program for Which Funds Are Being Requested
a. Title _____
b. Location/Date _____
c. Sponsoring Organization _____
d. Address _____
e. City_____ State_____ Zip_____ _____

5. Recent Judicial Education: Please list the non-mandatory judicial education programs you have attended as a participant (denote with a P) or as faculty (denote with an F) in the past three years. (You may attach additional pages if necessary.)

Program	Sponsor	Month/Year

6. Estimated Expenses
a. Tuition & Fees_____
b. Fare/Mileage_____
c. Ground Transportation_____
d. Meals_____
e. Lodging_____
f. Books_____
g. Supplies_____
h. Other_____
TOTAL ESTIMATED EXPENSES $_____ ___
TOTAL AMOUNT REQUESTED $_____ ___
(Amount requested may not exceed 75% of total estimated expenses)

7. Please attach a brief statement describing:
a. Whether there are educational programs in your State on this subject and, if so, why you wish to attend the out-of-State program.
b. Why this scholarship is needed and whether funds have been sought from State and local sources.
c. How attending this program would enhance your judicial career and your future service on the bench.

8. Please attach a current resume or professional summary.

Statement of Applicant's Commitment

If a scholarship is awarded, I will submit an evaluation of the educational program to the State Justice Institute and to the Chief Justice of my State.

_____
Signature

_____
Date

(Form S2)

State Justice Institute—Judicial Education Scholarship Application

Certificate of Concurrence

I, _____

Name of Chief Justice (or Chief Justice's Designee)

have reviewed the application for a scholarship to attend the program entitled_____, prepared by

_____

Name of Applicant

and concur in its submission to the State Justice Institute. I certify that the applicant's participation in the program would benefit the State, that the applicant's absence to attend the program would not present an undue hardship to the court, and that receipt of a scholarship would not diminish the amount of funds made available by the State for judicial education.

_____

Signature

_____

Name

_____

Title

_____

Date

FORM E

Appendix IV—State Justice Institute

Concept Paper Preliminary Budget

Personnel	$_____
Fringe Benefits	$_____
Consultant/Contractual	$_____
Travel	$_____
Equipment	$_____
Supplies	$_____
Telephone	$_____
Postage	$_____
Printing/Photocopying	$_____
Audit	$_____
Other	$_____
Indirect Costs (%)	$_____
PROJECT TOTAL	$_____
CASH MATCH	$_____
IN-KIND MATCH	$_____
AMOUNT REQUESTED FROM SJI	$_____

Financial assistance has been or will be sought for this project from the following other sources:

_____

_____

[FR Doc. 91–25190 Filed 10–21–91; 8:45 am]

BILLING CODE 6820–SC–M

federal register

Tuesday
October 22, 1991

Part VI

Department of Education

34 CFR Parts 301, 303, et al.
Office of Special Education and Rehabilitative Services; Educational Media Research, Production, Distribution, and Training Program; Final Rule and Notice

DEPARTMENT OF EDUCATION

34 CFR Parts 301, 303, 304, 305, 309, 315, 316, 319, 320, 324, 326, 327, 330, 331, 332, 333, and 338

RIN 1820-AA94

Office of Special Education and Rehabilitative Services

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends existing regulations for certain programs in the Office of Special Education Programs authorized under the Individuals with Disabilities Education Act (IDEA), formerly the Education of the Handicapped Act. These amendments result from the Education of the Handicapped Act Amendments of 1990 (Pub. L. 101-476). The amendments change the titles of programs to be consistent with revisions included in IDEA, add new definitions, and make other technical changes consistent with the Act and other regulations of the Department.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exceptions of §§ 305.40, 309.33, 315.41, 316.21, 316.31, 316.32, 319.33, 320.32, 320.41, 324.31, 324.41, 326.20, 326.42, 327.41, 332.41, 333.31, and 338.41. Sections 305.40, 309.33, 315.41, 316.21, 316.31, 316.32, 319.33, 320.32, 320.41, 324.31, 324.41, 326.20, 326.42, 327.41, 332.41, 333.31, and 338.41 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Norman Howe, Division of Program Analysis and Planning, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW (Switzer Building, room 3080-MES 2313), Washington, DC 20202. Telephone: (202) 732-1068; (TDD (202) 732-1169).

SUPPLEMENTARY INFORMATION: The technical amendments related to part 305, Regional Resource and Federal Centers, do not make changes pertaining to section 621(f)(1) of the Act which requires the Secretary to develop guidelines and criteria for the operation of Regional Resource and Federal Centers. The Secretary is required to publish proposed guidelines and criteria for review and comment in the **Federal Register** and will do so in a separate publication.

In addition, the technical amendments do not make changes relating to section 621(b), which was amended to require that the Secretary, in determining whether to approve a Regional Resource Center project, shall "utilize criteria for setting criteria that are consistent with the needs identified by States within the region served by such center, consistent with the requirements established by the Secretary under subsection (f), and, to the extent appropriate, consistent with requirements section 610, * * *". The Department interprets this provision to require it to examine the existing selection criteria in light of the 3 factors listed. Any prospective changes to the selection criteria would be published for public comment in a future notice of proposed rulemaking (NPRM).

Substantive changes to part 318, Training Personnel for the Education of Individuals with Disabilities—Careers in Special Education and Early Intervention; part 307, Services for Children with Deaf-Blindness; part 325, State Systems for Transition Services for Youth with Disabilities; part 328, Program for Children and Youth with Serious Emotional Disturbance; and part 300, Assistance to States for Education Children with Disabilities program have been published for public comment in separate NPRMs.

These regulations constitute a step in implementing the AMERICA 2000 strategy for achieving the National Education Goals agreed to by the President and the Governors.

One aspect of the President's strategy is to foster better and more accountable schools. These technical amendments implement statutory changes designed to improve the quality of educational instructions and other services for children with disabilities.

Section 610(b) of the Act directs the Secretary, if appropriate, to require applicants under parts C through G to demonstrate how they will address, in whole or in part, the needs of infants, toddlers, children, and youth with disabilities from minority backgrounds. This provision is being implemented through the application packages that accompany notices inviting applications for new awards. Therefore, this provision is not included in the technical changes to existing regulations.

Major technical changes incorporated into the regulations include the following:

- If appropriate, titles of programs and changes in terminology have been made to be consistent with the Individuals with Disabilities Education Act (IDEA).
- Under Training Personnel for the Education of Children with Disabilities—Grants to State Educational Agencies (SEAs) and Institutions of Higher Education, part 319, authority has been added for SEAs to use grants to assist in developing and maintaining their comprehensive systems of personnel development (CSPD) and conducting personnel recruitment and retention activities. Also added is the authority for the Department to provide technical assistance to SEAs related to the implementation of the CSPD section of their State Plan under part B of the Act. (See section 632 of IDEA).
- Under part 316, Training Personnel for Individuals with Disabilities—Parent Training and Information Centers, a new requirement has been added regarding minority participation on Boards and Special Governing Committees. (See section 631 of IDEA).
- Under part 331, Educational Media and Descriptive Videos Loan Service Program for Individuals with Disabilities and part 332, Educational Media Research, Production, Distribution, and Training, video-described programs have been added for the visually impaired. (See section 652 of IDEA).
- A requirement has been added to parts 305, 309, 315, 316, 319, 320, 324, 326, 332, 333, and 338 that, if appropriate, grantees submit reports to various clearinghouses and networks. (See section 610 of IDEA).
- Under the Early Intervention Program for Infants and Toddlers with Disabilities, part 303, changes reflect the new statutory requirement that a State's part H system must have procedures to determine the extent to which primary referral sources, such as hospitals and physicians, provide parents of infants and toddlers with disabilities with information about the availability of early intervention services. (See section 619 of IDEA).
- The Special Studies regulations in part 327 have been significantly reorganized and expanded to include the new priority areas identified by Congress, including provisions regarding improvement in program management, administration, and implementation. (See section 618 of IDEA). In addition, the Department is amending 34 CFR 327.3 to remove part 79 (Intergovernmental Review) from the list of applicable regulations. The reason for this technical change is to conform the

program regulations to the Department's current part 79 regulations. These regulations exclude the Special Studies program (CFDA 84.159) from part 79 coverage. See 55 FR 21712 through 21719, particularly page 21718 (May 25, 1990).

• Under part 309, Early Education for Children with Disabilities, authority has been added for a technical assistance development system, and synthesis projects. (See sections 623 (b) and (g) of IDEA).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these final regulations are small local educational agencies (LEAs), small institutions of higher education (IHEs), and small for-profit or nonprofit organizations receiving Federal funds under these programs. However, the regulations will not have a significant economic impact on the small LEAs affected because the regulations will not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations make only technical changes to implement new legislation.

Waiver of Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedures Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, since the changes merely incorporate statutory amendments into existing regulations and do not establish new substantive policy, public comment could have no effect on the content of the amended regulations. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(3)(B) that proposed rulemaking on these amended regulations is unnecessary and contrary to the public interest.

Paperwork Reduction Act of 1980

Sections 305.40, 309.33, 315.41, 316.21, 316.31, 316.32, 319.33, 320.32, 320.41, 324.31, 324.41, 326.20, 326.42, 327.41, 332.41, 333.31, and 338.41 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

(44 U.S.C. 3504(h))

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

These programs (except for Research in Education of Individuals with Disabilities and the Special Studies program) are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document would not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 301

Education, Education of individuals with disabilities, Programs—Education.

34 CFR Part 303

Education, Education of individuals with disabilities, Programs—Education, Medical personnel, State educational agencies.

34 CFR Part 304

Alteration, Children with disabilities, Equipment, Intermediate unit, Related services, Special education.

34 CFR Part 305

Education, Education of individuals with disabilities, Government contracts, Grant program—Education.

34 CFR Part 309

Education, Education of individuals with disabilities, Grant program—Education.

34 CFR Part 315

Education, Education of individuals with disabilities, Education research, Government contracts, Student aid, Teachers.

34 CFR Part 316

Act, Children with disabilities, Parent organizations.

34 CFR Part 319

Colleges and universities, Education, Education of individuals with disabilities, Education—training, Grant programs—Education, Reporting and recordkeeping requirements, State educational agencies, Teachers.

34 CFR Part 320

Education, Education of individuals with disabilities, Government contracts, Government programs—Education, Teachers.

34 CFR Part 324

Education, Education of individuals with disabilities, Grant programs—Education, Scholarships and fellowships, Teachers.

34 CFR Part 326

Children with disabilities, Related services, Special education, Disabled youth, Supported employment.

34 CFR Part 327

Children with disabilities.

34 CFR Part 330

Education, Education of individuals with disabilities, Motion pictures.

34 CFR Part 331

Education, Education of individuals with disabilities.

34 CFR Part 332

Education, Education of individuals with disabilities, Grant programs—Education.

34 CFR Part 333

Education, Education of individuals with disabilities, Educational facilities, Government contracts.

34 CFR Part 338

Adult education, Colleges and universities, Education, Education of individuals with disabilities, Government programs—Education, Vocational education.

Dated: August 16, 1991.

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers 84.173, 84.181, 84.155, 84.028, 84.024,

84.086, 84.029, 84.030, 84.023, 84.158, 84.159, 84.026, 84.180, 84.078)

The Secretary amends title 34 of the Code of Federal Regulations by revising parts 301, 303, 304, 305, 309, 315, 316, 319, 320, 324, 326, 327, 330, 331, 332, 333, and 338 as follows:

PART 301—PRESCHOOL GRANTS FOR CHILDREN WITH DISABILITIES

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

Authority: 20 U.S.C. 1419, unless otherwise noted.

2. The heading of Part 301 is revised to read as set forth above.

PART 301 [AMENDED]

3. Section 301.1 is amended by removing the words "Handicapped Children" from the heading and the undesignated introductory paragraph, and adding, in their place, the words "Children with Disabilities".

§§ 301.1, 301.3, 301.5, 301.10, 301.20, 301.21, 301.30, 301.31, 301.32 [Amended]

4. In 34 CFR part 301 remove the words "handicapped children" and add, in their place, the words "children with disabilities" in the following places:

(a) Section 301.1(a), (b), and (c);
(b) Section 301.3(a), (b), and (c);
(c) Section 301.5(c) (under *Comprehensive service delivery system*);
(d) Section 301.10 (a)(2) and (b)(2);
(e) Section 301.12 (b), and (c);
(f) Section 301.20 heading, (a), (a)(1), (a)(2), (b), and (c);
(g) Section 301.21 heading and twice in text;
(h) Section 301.30(a), (b)(1), (b)(2), and twice in (d);
(i) Section 301.31 twice in (a), twice in (b); and
(j) Section 301.32 twice.

5. In 34 CFR part 301 remove the word "handicaps" and add in its place, the word "disabilities" in the following places:

(a) Section 301.5(c) (under *Excess appropriations*); and
(b) Section 301.12 heading.

6. Section 301.4 is amended by revising paragraph (a) to read as follows:

§ 301.4 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in the following parts of title 34 of the Code of Federal Regulations—

(1) Part 76 (State-Administered Programs);
(2) Part 77 (Definitions that Apply to Department Regulations);
(3) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);
(4) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);
(5) Part 81 (General Education Provision Act—Enforcement);
(6) Part 82 (New Restrictions on Lobbying);
(7) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for a Drug-Free Workplace (Grants)); and
(8) Part 86 (Drug-Free Schools and Campuses).

* * * * *

§ 301.5 [Amended]

7. In § 301.5(c) the definition of *Act* is amended by removing the words, "Education of the Handicapped" and adding, in their place, the words "Individuals with Disabilities Education".

PART 303—EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH DISABILITIES

8. The authority citation for part 303 continues to read as follows:

Authority: 20 U.S.C. 1471–1485, unless otherwise noted.

9. The heading of part 303 is revised to read as set forth above.

§§ 303.1, 303.7, 303.12, 303.16, 303.151, 303.180, 303.302, 303.322, 303.521, 303.601, [Amended]

10. In 34 CFR part 303 remove the word "handicaps" and add, in its place, the word "disabilities" in the following places:

Section 303.1 heading, (a), and (c);
Section 303.7;
Section 303.12(b) and Note 1;
Section 303.16 heading, and (a);
Section 303.151 heading, (a), and (b)(4);
Section 303.180(a);
Section 303.302;
Section 303.322(b)(1);
Section 303.521(c); and
Section 303.601(a)(1).

§ 303.4 [Amended]

11. Section 303.4(a)(3) is amended by removing the words "Handicapped Children" and adding, in their place, the words "Children with Disabilities Program".

§ 303.5 [Amended]

12. Section 303.5 is amended by removing the words "Education of the Handicapped" and adding, in their place, the words "Individuals with Disabilities Education".

§§ 303.16, 303.301, 303.320 [Amended]

13. In 34 CFR Part 303 remove the word "handicapped" and add, in its place, the word "disabled" in the following places:

Section 303.16 NOTE 2;
Section 303.301(d)(2); and
Section 303.320 NOTE 1.

§§ 303.404, 303.460, 303.601 [Amended]

14. In 34 CFR part 303 remove the words "handicapped children" and add, in their place, the words "children with disabilities" in the following places:

Section 303.404 NOTE 2;
Section 303.460 three times in (b)(2); and
Section 303.601(a)(1).

§ 303.20 [Amended]

15. Section 303.320 is amended by adding after the words "under this part" in the undesignated text at the beginning of the section ", and includes the preparation and dissemination by the lead agency to all primary referral sources of information materials for parents on the availability of early intervention services".

§ 303.321 [Amended]

16. Section 303.321(d)(2) is amended by removing the word "and" at the end of (d)(2)(i); removing the period at the end of (d)(2)(ii) and adding in its place "; and,"; and adding a new (d)(2)(iii) to read as follows:

§ 303.321 Comprehensive child find system.

* * * * *

(d) * * *
(2) * * *

(iii) Include procedures for determining the extent to which primary referral sources, especially hospitals and physicians, disseminate the information, as described in § 303.320, prepared by the lead agency on the availability of early intervention services to parents of infants with disabilities.

* * * * *

17. Section 303.360(b)(3) is amended by redesignating (b)(3) (i) and (ii) as (b)(3) (ii) and (iii), respectively, and adding a new (b)(3)(i) to read as follows:

§ 303.360 Comprehensive system of personnel development.

* * * * *

(b) * * *
(3) * * *

(i) Assisting primary referral services in understanding the basic components

of early intervention services available in the State;

* * * * *

§ 303.522 [Amended]

18. Section 303.522(b)(4) is amended by removing "EHA" and adding, in its place, "IDEA".

§ 303.527 [Amended]

19. In § 303.527 the Note is amended by removing the words "a handicapped infant or toddler" and adding, in their place, the words "an infant or toddler with a disability"; and by removing "EHA" and adding, in its place, "IDEA".

PART 304—REMOVAL OF ARCHITECTURAL BARRIERS TO INDIVIDUALS WITH DISABILITIES PROGRAM

20. The authority citation for part 304 continues to read as follows:

Authority: 20 U.S.C. 1406, unless otherwise noted.

21. The heading of part 304 is revised to read as set forth above.

22. Section 304.1 is revised to read as follows:

§ 304.1 The Removal of Architectural Barriers to Individuals with Disabilities program.

The purpose of this part is to provide financial assistance to State educational agencies and, through them, to local educational agencies and intermediate educational units to remove architectural barriers to children with disabilities and other individuals with disabilities.

(Authority: 20 U.S.C. 1406)

23. Section 304.2 is revised to read as follows:

§ 304.2 Applicability of regulations in this part.

This part applies to assistance under section 607 of the Individuals with Disabilities Education Act.

(Authority: 20 U.S.C. 1406)

24. Section 304.3 is revised to read as follows:

§ 304.3 Regulations that apply to the Removal of Architectural Barriers to Individuals with Disabilities program.

The following regulations apply to assistance under the Removal of Architectural Barriers to Individuals with Disabilities program:

(a) The regulations in this part 304.

(b) The Education Department General Administrative Regulations (EDGAR) in the following parts of Title 34 of the Code of Federal Regulations—

(1) Part 76 (State-administered Programs);

(2) Part 77 (Definitions that Apply to Department Regulations);

(3) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(4) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(5) Part 81 (General Education Provisions Act—Enforcement);

(6) Part 82 (New Restrictions on Lobbying);

(7) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for a Drug-Free Workplace (Grants)); and

(8) Part 86 (Drug-Free Schools and Campuses).

(Authority: 20 U.S.C. 1406; 20 U.S.C. 3474(a))

§ 304.4 [Amended]

25. In § 304.4 paragraph (b) is amended by removing "Handicapped children" from the list of definitions, and adding, in its place "Children and disabilities".

26. Section 304.20 is amended by revising paragraphs (a)(2), (a)(2)(ii), and (b)(1) to read as follows:

§ 304.20 Amount of an SEA's grant.

* * * * *

(a) * * *

(2) The term "children with disabilities" means the number of children with disabilities determined by the Secretary—

* * * * *

(ii) In average daily attendance at schools for children with disabilities or supported by a State agency within the meaning of section 1221 of chapter 1 of title I of the Elementary and Secondary Education Act of 1965.

* * * * *

(b) * * *

(1) Dividing the number of children with disabilities in that State by the total number of children with disabilities in all States submitting approvable applications under this part; and

* * * * *

§ 304.41 [Amended]

27. In § 304.41, paragraph (a) is amended by removing the words "Education of the Handicapped Act" and adding, in their place, the words "Individuals with Disabilities Education Act".

28. Section 304.51 is amended by revising paragraphs (a), (b)(1), (b)(2), and (b)(3) to read as follows:

§ 304.51 Project priorities.

(a) An SEA may establish priorities for the use of funds made available under this part. The SEA may, for example, give special consideration to projects that will meet the special needs of urban or rural locations, or that will facilitate the transition of children with disabilities and individuals with disabilities from school to work.

(b) * * *

(1) Make available to children with disabilities the variety of educational programs and services available to nondisabled children in the area served by the LEA or IEU;

(2) Provide nonacademic and extracurricular services and activities in a manner that affords children with disabilities opportunity for participation in these services and activities; and

(3) Provide assessibility to individuals with disabilities involved in the education of children with disabilities or eligible to participate in programs administered by LEAs and IEUs.

(Authority: 20 U.S.C. 1406)

PART 305—REGIONAL RESOURCE AND FEDERAL CENTERS

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

Authority: 20 U.S.C. 1421, unless otherwise noted.

30. Section 305.1 is amended by revising paragraph (a) to read as follows:

§ 305.1 What are the Regional Resource and Federal Centers?

(a) This program supports the establishment and operation of Regional Resource Centers that focus on special education and related services and early intervention services. Regional Resource Centers shall provide consultation, technical assistance, and training, as requested, to State educational agencies and through those State educational agencies, to local educational agencies and to other appropriate public agencies providing special education and related services and early intervention services. The purpose of this assistance is to aid these agencies in providing early intervention, special education, and related services to infants, toddlers, children, and youth with disabilities and their families.

* * * * *

§ 305.3 [Amended]

31. Section 305.3 is amended by revising paragraphs (a)(2) (i), (iv), and (v) and adding new paragraphs (a)(2) (vi), (vii), (viii), and (ix) to read as follows:

§ 305.3 What regulations apply to this program?

(a) * * *

* * * * *

(2) * * *

(i) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations);

* * * * *

(iv) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(v) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(vi) Part 81 (General Education Provisions Act—Enforcement);

(vii) Part 82 (New Restrictions on Lobbying);

(viii) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirement for Drug-Free Workplace (Grants)); and

(ix) Part 86 (Drug-Free Schools and Campuses).

* * * * *

§ 305.10 [Amended]

32. In § 305.10 paragraphs (a), (b), (c), and (e) are amended by removing the word "handicapped" and by adding the words "with disabilities" after the word "youth"; paragraph (a) is amended by adding after the word "agencies", "and through such State educational agencies, local educational agencies and other appropriate public agencies,"; and paragraph (d) is amended by adding the words "programs and" after the word "relevant".

33. In § 305.31 paragraphs (c)(2)(v)(C) and (d)(2)(iv)(C) are revised to read as follows:

§ 305.31 What are the selection criteria for evaluating applications under the Regional Resource Centers program?

* * * * *

(c) * * *

(2) * * *

(v) * * *

(C) Individuals with disabilities; and

* * * * *

(d) * * *

(2) * * *

(iv) * * *

(C) Individuals with disabilities; and

* * * * *

34. Section 305.40 is amended in paragraph (a) by removing the word "; and" and in its place putting a period.

35. Section 305.40(b) is amended by removing the words "section 627" and adding, in their place the words "section 610(d)".

36. Section 305.40 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 305.40 What additional activities must each Regional Resource Center perform?

* * * * *

(c) Assure that the services provided are consistent with the priority needs identified by the States served by the Center.

(d) If appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of those procedures, findings, and information. The Secretary shall require their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under parts C and D of the Act, as well as the national Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and such other networks as the Secretary may determine to be appropriate.

(Authority: 20 U.S.C. 1409(g); 20 U.S.C. 1421)

PART 309—EARLY EDUCATION PROGRAM FOR CHILDREN WITH DISABILITIES

37. The authority citation for part 309 continues to read as follows:

Authority: 20 U.S.C. 1423, unless otherwise noted.

38. The heading of part 309 is revised to read as set forth above.

39. In § 309.1 the heading, introductory text, and paragraph (a) are revised to read as follows:

§ 309.1 What is the Early Education Program for Children with Disabilities (EEPCD)?

The EEPCD supports activities that are designed—

(a) To address the special needs of children with disabilities, birth through age eight, and their families; and

* * * * *

40. Section 309.3 is amended by adding "contract," before the word "grant" in the introductory text; removing the word "handicaps" in paragraph (a), and adding, in its place, the word "disabilities"; removing the word "handicaps" in paragraph (c), and adding, in its place, the word "disabilities"; removing the word "handicaps" in paragraph (f), and adding, in its place, the words "disabilities, including programs to integrate children with disabilities into regular preschool programs"; and adding new paragraphs (g) and (h) to read as follows:

§ 309.3 What activities may the Secretary fund?

* * * * *

(g) *Technical assistance development system.* This system assists entities operating experimental, demonstration, and outreach programs and assists State agencies to expand and improve services to children with disabilities.

(h) *Synthesis projects.* These projects synthesize the knowledge developed under this part and organize, integrate, and present the knowledge so it can be incorporated and imparted to parents, professionals, and others providing or preparing to provide preschool or early intervention services and to persons designing preschool or early intervention programs.

41. Section 309.4 is amended by revising paragraph (a)(1); removing paragraph (a)(4); redesignating paragraph (a)(5) as (a)(4) removing the period following redesignated paragraph (a)(4), and adding, in its place, a semicolon; and adding new paragraphs (a)(5), (6), (7), (8), and (9) to read as follows:

§ 309.4 What regulations apply to this program?

* * * * *

(a) * * *

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations),

* * * * *

(5) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(6) Part 81 (General Education Provisions Act—Enforcement);

(7) Part 82 (New Restrictions on Lobbying);

(8) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and

(9) Part 86 (Drug-Free Schools and Campuses)

* * * * *

42. Section 309.5 is amended by removing the words "Handicapped children" in paragraph (b) and by revising paragraph (c) to read as follows:

§ 309.5 What definitions apply to this program?

* * * * *

(c) *Other definitions.* The following definitions also apply to this part.

Act. As used in this part, "Act" means the Individuals with Disabilities Education Act.

Children with disabilities. As used in this part, "children with disabilities" means those children from birth through age eight with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, who because of those impairments need special education and related services, and infants and toddlers, birth through age two, who need early intervention services because they—

(A) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: Cognitive development, physical development including vision and hearing, language and speech development, psychosocial development, of self-help skills; or

(B) Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

The term also includes at a State's discretion, individuals from birth through age two, who are at risk of having substantial developmental delays if early intervention services are not provided.

(Authority: 20 U.S.C. 1401(a); 20 U.S.C. 1472(1))

§ 309.21 [Amended]

43. Section 309.21 is amended by removing the word "handicaps" in paragraph (b)(1) and adding, in its place, the word "disabilities", removing the words "handicapping condition" in paragraphs (c)(2)(ii) and (f)(2)(iv) and adding, in their respective places, the word "disability".

44. The heading of subpart D is amended by adding the words "Technical Assistance," before the words, "and Outreach Projects".

45. Section 309.30 is amended by revising paragraphs (a)(1) through (a)(5) and adding new paragraphs (a)(6) through (a)(9) to read as follows:

§ 309.30 What conditions must be met by recipients of experimental, demonstration, and outreach projects?

(a) * * *

(1) Facilitate the intellectual, emotional, physical, mental, social, speech or other communication mode, language development, and self-help skills of children with disabilities;

(2) Provide family education and include a parent or their representative, as well as encourage the participation of parents of children with disabilities, in the development and operation of projects under this section;

(3) Acquaint the community in which the project is located with the special needs and potentialities of children with disabilities;

(4) Offer training about exemplary models and practices, including interdisciplinary models and practices, to State and local personnel who provide services to children with disabilities, and to the parents of these children;

(5) Support the adoption of exemplary models and practices in States and local communities, including the involvement of adult role models with disabilities at all levels of the program;

(6) Facilitate and improve the early identification of infants and toddlers with disabilities or those infants and toddlers at risk of having developmental disabilities;

(7) Facilitate the transition of infants with disabilities or infants at risk of having developmental delays, from medical care to early intervention services, and the transition from early intervention services to preschool special education or regular education services (especially where the lead agency for early intervention services under part H of the Act is not the State educational agency);

(8) Promote the use of assistive technology devices and assistive technology services, if appropriate, to enhance the development of infants and toddlers with disabilities; and

(9) Increase the understanding of, and address, the early intervention and preschool needs of children exposed prenatally to maternal substance abuse.

* * * * *

46. A new § 309.32 is added to read as follows:

§ 309.32 What are the requirements for technical assistance projects?

(a) The technical assistance development system shall provide assistance to parents of and advocates for infants, toddlers, and children with disabilities, as well as direct service and administrative personnel involved with these children, including assistance to part H State agencies on procedures for use by primary referral sources in referring a child to the appropriate agency within the system for evaluation, assessment, or service.

(b) Information from the system should be aggressively disseminated through established information networks and other mechanisms to ensure both an impact and benefits at the community level.

(Authority: 20 U.S.C. 1423(b))

47. A new § 309.33 is added to read as follows:

§ 309.33 What other conditions must be met by grantees under this program?

Grantees shall, if appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of such procedures, findings, and information. The Secretary shall require their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under parts C and D of the Act, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and such other networks as the Secretary may determine to be appropriate.

(Authority: 20 U.S.C. 1409(g))

PART 315—PROGRAM FOR CHILDREN WITH SEVERE DISABILITIES

48. The authority for part 315 continues to read as follows:

Authority: 20 U.S.C. 1424, unless otherwise noted.

49. The heading of part 315 is revised to read as set forth above.

§§ 315.10, 315.11, 315.12, 315.13, 315.32, 315.33 [Amended]

50. In 34 CFR part 315 remove the words "severely handicapped children and youth" and add, in their place, the words "children with severe disabilities" in the following places:

(a) Section 315.10 (b) and (d);

(b) Section 315.11 (a)(2) and (b)(2);

(c) Section 315.12 (a), (a)(2), (a)(3), (a)(4), and (b)(2);

(d) Section 315.13(d)(2);

(e) Section 315.32 (a), (a)(1), (d)(2)(i), (d)(2)(ii), and (d)(2)(iii); and

(f) Section 315.33 (a), (a)(2), and (a)(3)

51. Section 315.1 is revised to read as follows:

§ 315.1 What is the Program for Children with Severe Disabilities?

This program supports research, development or demonstration, training, and dissemination activities that, consistent with the purpose of part C of the Individuals with Disabilities Education Act, meet the unique educational needs of infants, toddlers, children, and youth with severe disabilities.

(Authority: 20 U.S.C. 1424)

52. Section 315.3 is amended by revising paragraph (b)(1), removing the period at the end of paragraph (b)(4) and adding, in its place, a semicolon, and adding new paragraphs (b)(5) through (9) to read as follows:

§ 315.3 What regulations apply to this program?

* * * * *

(b) * * *

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations);

* * * * *

(5) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(6) Part 81 (General Education Provisions Act—Enforcement);

(7) Part 82 (New Restrictions on Lobbying);

(8) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and

(9) Part 86 (Drug-Free Schools and Campuses).

(Authority: 20 U.S.C. 1424; 20 U.S.C. 3474(a))

53. Section 315.4 is amended by revising paragraphs (c), (d) introductory language, (d)(1), (d)(2), and (d)(3) introductory language to read as follows:

§ 315.4 What definitions apply to this program?

* * * * *

(c) *Children with disabilities.* The term "children with disabilities" as used in this part means those children with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, and who by reason thereof need special education and related services, and infant and toddlers, birth through age two, who need early intervention services because they—

(1) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one, or more of the following areas: Cognitive development, physical development including vision and hearing, language and speech development, psychosocial development, or self help skills; or

(2) Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

The term includes, at a State's discretion, individuals from birth through age two, who are at risk of having substantial developmental delays if early intervention services are not provided.

(Authority: 20 U.S.C. 1401(1); 20 U.S.C. 1472(1))

(d) *Children with severe disabilities.* (1) As used in this part, the term "children with severe disabilities" refers to children with disabilities who, because of the intensity of their physical, mental, or emotional problems, need highly specialized education, social, psychological, and medical services in order to maximize their full potential for useful and meaningful participation in society and for self-fulfillment.

(2) The term includes those children with disabilities with severe emotional disturbance (including schizophrenia), autism, severe and profound mental retardation, and those who have two or more serious disabilities such as deaf-blindness, mental retardation and blindness, and cerebral-palsy and deafness.

(3) Children with severe disabilities—

* * * * *

54. Section 315.10 is amended by revising paragraphs (a) and (c), and adding new paragraphs (e) and (f) to read as follows:

§ 315.10 What types of activities are considered for support by the Secretary under this part?

* * * * *

(a) Research to identify and meet the full range of special education, related services and early intervention needs (including transportation to and from school) of children with severe disabilities, described in § 315.11.

* * * * *

(c) Training of special and regular education, related services, and early intervention personnel engaged or preparing to engage in programs specifically designed for children with severe disabilities, including training of regular teachers, instructors, and administrators in strategies for serving children with disabilities that include integrated settings for educating children with severe disabilities along with their nondisabled peers, as described in § 315.13.

* * * * *

(e) Statewide projects in conjunction with the State's plan under Part B, to improve the quality of special education and related services for children with severe disabilities, and to change the delivery of those services from segregated to integrated environments.

(f) Development and operation of extended school year demonstration projects for children with severe disabilities.

§ 315.11 [Amended]

55. In § 315.11, paragraph (a)(1) is amended by removing the words "needs of severely handicapped children and youth" and adding, in their place, the words "education, related services and early intervention needs (including transportation to and from school) of children with severe disabilities".

§ 315.13 [Amended]

56. In § 315.13, paragraph (b) is amended by adding the words "special and regular education" after the word "other", and adding the words "related service personnel, early intervention personnel," after "parents,".

§ 315.14 [Amended]

57. Section 315.14 is amended by removing the words "the severely handicapped" and adding, in their place, the words "children with severe disabilities".

§§ 315.32 and 315.33 [Amended]

58. In §§ 315.32 and 315.33 remove the word "handicapping", and add, in its place, the word "disabling" in the following places:

(a) Section 315.32(c)(4);

(b) Section 315.32(d)(1)(iv); and

(c) Section 315.33(b)(5) and (c)(1)(iv).

59. In § 315.32(d)(2)(ii) remove the words "handicapped children and youth", and add in their place, the words, "children with disabilities".

60. A new § 315.41 is added to read as follows:

§ 315.41 What other conditions must be met by grantees under this program?

Grantees shall, if appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of such procedures, findings, and information. The Secretary shall require their delivery, as appropriate, to the Regional and Federal Resource Centers, the

Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under parts C and D of the Act, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and such other networks as the Secretary may determine to be appropriate.

(Authority: 20 U.S.C. 1409(g))

PART 316—TRAINING PERSONNEL FOR INDIVIDUALS WITH DISABILITIES—PARENT TRAINING AND INFORMATION CENTERS

61. The authority citation for Part 316 continues to read as follows:

Authority: 20 U.S.C. 1431 and 1434, unless otherwise noted.

62. The heading of Part 316 is revised to read as set forth above.

63. Section 316.1 is amended by revising paragraph (a) to read as follows:

§ 316.1 What is the purpose of this program?

(a) This program supports grants to parent organizations for the purpose of providing training and information to parents of children (infants, toddlers, children, and youth) with disabilities, and to persons who work with parents to enable parents to participate more fully and effectively with professionals in meeting the educational needs of their children with disabilities.

* * * * *

64. Section 316.3 is amended by revising paragraphs (a), (b), (e), and (f) to read as follows:

§ 316.3 What activities may the Secretary fund?

* * * * *

(a) Understand the nature and needs of the disabling conditions of their children with disabilities.

(b) Provide follow-up support for their children with disabilities educational programs;

* * * * *

(e) Obtain appropriate information about the range of options, programs, services, and resources available at the national, State, and local levels to children with disabilities, and their families; and

(f) Understand the provisions for educating children with disabilities under the Act.

65. Section 316.4 is amended by revising paragraph (a) to read as follows:

§ 316.4 What regulations apply to this program?

(a) The Education Department General Administrative Regulations (EDGAR) in the following parts of title 34 of the Code of Federal Regulations—

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions That Apply to Department Regulations);

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(5) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(6) Part 81 (General Education Provisions Act—Enforcement);

(7) Part 82 (New Restrictions on Lobbying);

(8) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for a Drug-Free Workplace (Grants)); and

(9) Part 86 (Drug-Free Schools and Campuses).

* * * * *

66. Section 316.5 is amended by revising paragraph (c) to read as follows:

§ 316.5 What definitions apply to this program?

* * * * *

(c) *Other definitions specific to 34 CFR Part 316.* The following terms used in this part are defined as follows:

Act means the Individuals with Disabilities Education Act (IDEA).

Children with disabilities means children with mental retardation, hearing impairments including deafness, speech or language impairment, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, and who by reason thereof need special education and related services.

Parent organization means a private nonprofit organization that is governed by a board of directors of which a majority of the members are parents of children with disabilities, particularly minority parents, and that includes members who are professionals, especially minority professionals, in the field of special education, early intervention, and related services, and individuals with disabilities. If the nonprofit private organization does not have such a board, the organization must have a membership representing the interests of individuals with disabilities, and must establish a special governing committee of which a majority of the members are parents of children disabilities, particularly parents of minority children, and that includes members who are professionals, especially minority professionals, in the fields of special education, early intervention, and related services, to operate the training and information program. Parent and professional membership of these boards or special governing committees must be broadly representative of minority and other individuals and groups having an interest in special education, early intervention, and related services. The organization, in providing training and information under this part, must serve the parents of children representing the full range of disabling conditions. The organization must demonstrate the capacity and expertise to conduct the authorized training and information activities effectively, to network with clearinghouses, including those established under section 633 of the Act and other organizations and agencies, and to network with other established national, State, and local parent groups representing the full range of parents of children with disabilities, especially parents of minority children.

(Authority: 20 U.S.C. 1431(b))

67. Section 316.21 is amended by revising paragraphs (a)(2), (b)(1), (b)(2), (b)(5), (b)(6), and (e)(4) to read as follows:

§ 316.21 What selection criteria does the Secretary use?

* * * * *

(a) * * *

(2) The present and projected training and information needs for personnel to work with parents of children with disabilities.

(b) * * *

(1) Understand the nature and needs of the disabling conditions of their children;

(2) Provide follow-up support for their children's educational program;

* * * * *

(5) Obtain information about the programs, services, and resources available to their children and the degree to which the programs, services, and resources are appropriate to the needs of their children; and

(6) Understand the provisions for educating children with disabilities under the Act.

* * * * *

(e) * * *

(4) How the applicant, as a part of its nondiscriminatory practices, will ensure that its personnel are selected for employment without regard to race, color, natural origin, gender, age, or disability; and

* * * * *

68. Section 316.22(a) is revised and (c) is added to read as follows:

§ 316.22 What additional factors does the Secretary consider?

In addition to the criteria in § 316.21, The Secretary considers the following factors in making an award:

(a) *Geographic distribution.* (1) In selecting projects for award, the Secretary ensures that, to the greatest extent possible, awards are distributed geographically, on a State or regional basis, throughout all the States and serve parents of children with disabilities in both urban and rural areas. (2) After the establishment in each State of a parent training and information center, the Secretary shall provide for the establishment of three experimental centers to serve large numbers of parents of children with disabilities located in high density areas that do not have such centers and two such centers to serve large numbers of parents of children with disabilities located in rural areas.

(b) * * *

(c) *Adequate Program.* Parent projects will be funded at a sufficient size, scope, and quality to ensure an adequate program to serve the parents in the area.

* * * * *

69. Section 316.30 is revised to read as follows:

§ 316.30 What types of services are required?

(a) Projects must be designed to meet the unique training and information needs of parents of children with disabilities who live in the area to be served by the project, particularly those who are members of groups that have been traditionally underrepresented.

(b) A grantee shall consult with appropriate agencies that serve or assist children with disabilities in the geographic areas served by the project.

(c) Projects must serve parents of minority children with disabilities representative to the proportion of the minority population in the areas being served.

70. Section 316.31 is revised to read as follows:

§ 316.31 What are the duties of the board of directors or special governing committee of a parent organization?

The recipient's board of directors or special governing committee as described in § 316.5 must meet at least once in each calendar quarter to review the parent training and information activities under the grant. Whenever a private nonprofit organization requests a renewal of a grant under this subsection, the board of directors or special governing committee shall submit to the Secretary a written review of the parent training and information program conducted by that private nonprofit organization during the preceding fiscal year.

(Authority: 20 U.S.C. 1431(c))

71. A new § 316.32 is added to read as follows;

§ 316.32 What other conditions must be met by grantees under this program?

(a) Grantees shall, if appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of such procedures, findings, and information. The Secretary shall require their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under parts C and D of the Act, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and other networks the Secretary may determine to be appropriate.

(b) The grantee shall provide data for every year of the project on—

(1) The number of parents provided information and training by disability category of their children;

(2) The types and modes of information or training provided;

(3) Strategies used to reach and serve parents of minority children with disabilities;

(4) The number of parents served as a result of activities described under paragraph (b)(3) of this section;

(5) Activities to network with other information clearinghouses and parent groups; and

(6) The number of agencies and organizations consulted with at the national, State, regional, and local levels.

(Authority: 20 U.S.C. 1409(g); 20 U.S.C. 1431(c); 20 U.S.C. 1434(a)(3)).

PART 319—TRAINING PERSONNEL FOR THE EDUCATION OF INDIVIDUALS WITH DISABILITIES PROGRAM—GRANTS TO STATE EDUCATIONAL AGENCIES AND INSTITUTIONS OF HIGHER EDUCATION

72. The authority citation for part 319 continues to read as follows:

Authority: 20 U.S.C. 1432 and 1434, unless otherwise noted.

73. The heading of part 319 is revised to read as set forth above.

§ 319.1 [Amended]

74. In § 319.1 the undesignated introductory text is amended by removing the word "handicaps" and adding, in its place, the word "disabilities".

75. In § 319.2 paragraph (a) is amended by removing the word "handicaps" and adding, in its place, the word "disabilities", paragraph (b) is revised, and new paragraphs (c) and (d) are added to read as follows:

§ 319.2 What activities may the Secretary fund?

* * * * *

(b) Any activities assisted under this part must be consistent with the personnel needs identified in the State's comprehensive systems of personnel development under sections 613 and 676 of the Individuals with Disabilities Education Act.

(c) Funds may also be used to assist the State in developing and maintaining the systems described in paragraph (b) of this section and conducting personnel recruitment and retention activities.

(d) The Secretary is also authorized to provide technical assistance to State educational agencies on matters pertaining to the effective implementation of section 613(a)(3) of the Act.

(Authority: 20 U.S.C. 1432)

76. Section 319.3 is amended by revising paragraph (a) to read as follows:

§ 319.3 What regulations apply to this program?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in the following parts of title 34 of the Code of Federal Regulations—

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions that Apply to Department Regulations);

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(5) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(6) Part 81 (General Education Provisions Act—Enforcement);

(7) Part 82 (New Restrictions on Lobbying);

(8) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and

(9) Part 86 (Drug-Free Schools and Campuses).

* * * * *

77. Section 319.10 is amended by revising the heading and paragraph (a) to read as follows:

§ 319.10 How does an eligible applicant apply for a mandatory State grant?

(a) Each SEA may make an application to the Secretary for a mandatory State grant under § 319.1(a).

* * * * *

78. A new § 319.11 is added to read as follows:

§ 319.11 How does an eligible applicant apply for a competitive State grant?

Each SEA may make an application to the Secretary for a competitive grant under § 319.1(b).

(Authority: 20 U.S.C. 1432)

79. Section 319.20 is amended by revising the heading to read as follows:

§ 319.20 How does the Secretary determine the amount of a mandatory State grant?

80. Section 319.20(a) is amended by removing the word "system" and adding, in its place, the word "systems".

81. Section 319.20(a)(1) is amended by removing the words "Education of the Handicapped Act (EHA)" and adding, in their place "Individuals with Disabilities Education Act (IDEA)".

* * * * *

§ 319.21 [Amended]

82. In § 319.21 paragraph (a) is amended by removing the word "handicapped" and adding the words "with disabilities" after the word "youth", and by removing the word "system" and adding, in its place, the word "systems"; and paragraph (b) is amended by removing the term "EHA" and adding, in its place, the term "IDEA".

§ 319.22 [Amended]

83. In § 319.22 paragraph (b)(1)(i) is amended by removing the word "system" and adding, in its place, the word "systems"; paragraph (b)(1)(iii) is amended by removing the words "Education of the Handicapped" and adding, in their place, the words "Individuals with Disabilities Education"; paragraphs (b)(2) (ii), (iv), and (vii) are amended by removing the word "handicaps" and adding, in its place, the word "disabilities"; and, paragraphs (b)(3)(v) and (b)(5)(iv) are amended by removing the words "handicapping condition" and adding, in their place, the word "disability".

84. Section 319.30 is amended by revising paragraph (h) to read as follows:

§ 319.30 Is student financial assistance authorized?

* * * * *

(h) For a student with disabilities, an allowance (as determined by the institution) for those expenses related to his or her disability, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies; and

* * * * *

85. A new § 319.33 is added to read as follows:

§ 319.33 What other conditions must be met by grantees under this program?

Grantees shall, if appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of such procedures, findings, and information. The Secretary shall require their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under parts C and D of the Act, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and such other networks as the Secretary may determine to be appropriate.

(Authority: 20 U.S.C. 1409(g))

PART 320—CLEARINGHOUSES

86. The authority citation for part 320 continues to read as follows:

Authority: 20 U.S.C. 1433 and 1435, unless otherwise noted.

87. The heading of part 320 is revised to read as set forth above.

88. Section 320.1 is revised to read as follows:

§ 320.1 What is the Clearinghouse program?

The Clearinghouses program provides financial assistance for—

(a) A national clearinghouse on the education of children and youth with disabilities that disseminates information and provides technical assistance to parents, professionals, and other interested parties;

(b) A national clearinghouse on postsecondary education for individuals with disabilities; and

(c) A national clearinghouse designed to encourage students to seek careers and professional personnel to seek employment in the various fields relating to the education of children and youth with disabilities.

(Authority: 20 U.S.C. 1433)

§ 320.2 [Amended]

89. Section 320.2 is amended by removing the words "In addition, contracts may be made with profit-making organizations under this section only when necessary for materials or media access."

§§ 320.3 and 320.4 [Redesignated]

90. Sections 320.3 and 320.4 are redesignated as §§ 320.4 and 320.5, respectively.

91. A new § 320.3 is added to read as follows:

§ 320.3 What activities are required of clearinghouses?

The clearinghouses are required to—

(a) Collect, develop, and disseminate information;

(b) Provide technical assistance;

(c) Conduct coordinated outreach activities;

(d) Provide for the coordination and networking with other relevant national, State, and local organizations and information and referral resources;

(e) Respond to individuals and organizations seeking information; and

(f) Provide for the synthesis of information for its effective utilization by parents, professionals, individuals with disabilities, and other interested parties.

(Authority: 20 U.S.C. 1433)

92. Redesignated § 320.4 is amended by revising paragraphs (b)(1), (b)(4) and (b)(5) and adding new paragraphs (b)(6), (b)(7), (b)(8), and (b)(9) to read as follows:

§ 320.4 What regulations apply to this program?

* * * * *

(b) * * *

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations);

* * * * *

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(5) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(6) Part 81 (General Education Provisions Act—Enforcement);

(7) Part 82 (New Restrictions on Lobbying);

(8) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and

(9) Part 86 (Drug-Free Schools and Campuses).

* * * * *

93. Section 320.10 is revised to read as follows:

§ 320.10 What kinds of activities may be supported under this part?

The Secretary may provide funds under this part to—

(a) Establish and operate a national clearinghouse for children and youth with disabilities that will do the following:

(1) Collect and disseminate information (including the development of materials) on characteristics of infants, toddlers, children, and youth with disabilities and on programs, legislation, and services relating to their education under this Act and other Federal laws.

(2) Participate in programs and services related to disability issues for providing outreach, technical assistance; collection, and dissemination of information; and promoting networking of individuals with appropriate national, State, and local agencies and organizations.

(3) Establish a coordinated network and conduct outreach activities with relevant Federal, State, and local organizations and other sources for promoting public awareness of disability issues and the availability of information, programs, and services.

(4) Collect, disseminate, and develop information on current and future national, Federal, regional, and State needs for providing information to parents, professionals, individuals with disabilities, and other interested parties relating to the education and related services of individuals with disabilities.

(5) Provide technical assistance to national, Federal, regional, State and local agencies and organizations seeking to establish information and referral services for individuals with disabilities and their families.

(6) Include strategies to disseminate information to underrepresented groups such as those with limited English proficiency, in carrying out the activities in this section.

(b) Establish and operate a national clearinghouse on postsecondary education for individuals with disabilities that will do the following:

(1) Collect and disseminate information nationally on characteristics of individuals entering and participating in education and training programs after high school; legislation affecting such individuals and such programs; policies; procedures, and support services, as well as adaptations, and other resources available or recommended to facilitate the education of individuals with disabilities; available programs and services that include, or can be adapted to include, individuals with disabilities; and sources of financial aid for the education and training of individuals with disabilities.

(2) Identify areas of need for additional information.

(3) Develop new materials (in both print and nonprint form), especially by synthesizing information from a variety of fields affecting disability issues and the education, rehabilitation, and retraining of individuals with disabilities.

(4) Develop a coordinated network of professionals, related organizations and associations, mass media, other clearinghouses, and governmental agencies at the Federal, regional, State, and local level for the purposes of disseminating information and promoting awareness of issues relevant to the education of individual with disabilities after high school and referring individuals who request information to local resources.

(5) Respond to requests from individuals with disabilities, their parents, and professionals who work with them, for information that will enable them to make appropriate decisions about postsecondary education and training.

(c) Establish and operate a national clearinghouse designed to encourage students to seek careers and professional personnel to seek employment in the various fields related to the education of children and youth with disabilities that will do the following:

(1) Collect and disseminate information on current and future national, regional, and State needs for special education and related services personnel.

(2) Disseminate information to high school counselors and others concerning current career opportunities in special education, location of programs, and various forms of financial assistance (such as scholarships, stipends, and allowances).

(3) Identify training programs available around the country.

(4) Establish a network among local and State educational agencies and institutions of higher education concerning the supply of graduates and available openings.

(5) Provide technical assistance to institutions seeking to meet State and professionally recognized standards.

(Authority: 20 U.S.C. 1433)

§ 320.30 [Amended]

94. Sections 320.30(a)(2)(v)(C) and (b)(2)(iv)(C) are amended by removing the words "Handicapped persons" and in their place adding the words "Individuals with disabilities."

95. A new § 320.32 is added to read as follows:

§ 320.32 What additional factors does the Secretary consider?

In awarding grants, contracts, and cooperative agreements under this part, the Secretary gives priority to any applicant with:

(a) demonstrated, proven effectiveness at the national level in performing the functions established in this part; and with the ability to conduct such projects, communicate with intended consumers of information, and maintain the necessary communication with national, regional, State and local agencies and organizations.

(b) demonstrated, proven effectiveness at the national level in provding informational services to minorities and minority organizations.

§ 320.40 [Amended]

96. Section 320.40(a) is amended by removing the word "handicapped" and by adding the words "with disabilities" after the words "indiviudals" and "youth".

(Authority: 20 U.S.C. 1433)

97. A new § 320.41 is added to read as follows:

§ 320.41 What other conditions must be met by grantees under this program?

(a) Grantees shall, if appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize

the dissemination and use of such procedures, findings, and information. The Secretary shall require their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouse, and the Technical Assistance to Parents Program (TAPP) assisted under parts C and D of the Act, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Programs (CASSP) under the National Institute of Mental health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and such other networks as the Secretary may determine to be appropriate.

(b) Beginning in fiscal year 1991, and for each year thereafter, each project assisted under this part provide information required by the Secretary, including—

(1) The number of individuals served by disability category, as appropriate, including parents, professionals, students, and individuals with disabilities;

(2) A description of responses utilized;

(3) A listing of new products developed and disseminated; and

(4) A description of strategies and activities utilized for outreach to urban and rural areas with populations of minorities and underrepresented groups.

(Authority: 20 U.S.C. 1409); 20 U.S.C. 1433)

PART 324—RESEARCH IN EDUCATION OF INDIVIDUALS WITH DISABILITIES PROGRAM

98. The authority citation for part 324 continues to read as follows:

Authority: 20 U.S.C. 1441–1444, unless otherwise noted.

99. The heading of Part 324 is revised to read as set forth above.

100. Section 324.1 is revised to read as follows:

§ 324.1 What is the Research in Education of Individuals with Disabilities programs?

The Research in Education of Individuals with Disabilities program provides support to—

(a) Advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services, including professionals who work with children with disabilities in regular education environments, to provide such children effective instruction and enable them to successfully learn; and

(b) Research and related activities, surveys, or demonstrations relating to physical education or recreation, including therapeutic recreation, for children with disabilities.

(Authority: 20 U.S.C. 1441(a); 20 U.S.C 1442))

§ 324.2 [Amended]

101. In § 324.2, paragraphs (a) and (b) are amended by removing the words "Education of the Handicapped Act" and adding, in their place, the words "Individuals with Disabilities Education Act", paragraph (b) is furtehr amended by removing the words "handicapped children" both times they appear, and adding, in their place, the words "children with disabilities".

102. In section 324.3, paragraphs (b)(1), (b)(3), and (b)(4) are revised and paragraphs (b)(5) through (b)(8) are added to read as follows:

§ 324.3 What regulations apply to this program?

* * * * *

(b) The Education Department General Administrative Regulations (EDGAR) in the following parts of title 34 of the Code of Federal Regulations—

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations);

* * * * *

(3) Part 77 (Definitions that Apply to Department Regulations);

(4) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(5) Part 81 (General Education Provisions Act—Enforcement);

(6) Part 82 (New Restrictions on Lobbying);

(7) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and

(8) Part 86 (Drug-Free Schools and Campuses).

* * * * *

§ 324.4 [Amended]

103. In § 324.4 paragraph (b) is amended by removing the words "Handicapped children" and adding, in their place, the words "Children with disabilities", and paragraph (c) is amended by removing the words "Handicapped youth" and adding, in their place, the words "Youth with disabilities", and by removing the words "handicapped child" and adding, in their place, the words "child with disabilities".

104. The heading of subpart B is revised to read as follows: Subpart B—What Priorities Does the Secretary Consider for Support Under This Program?

105. Section 324.10 is revised to read as follows:

§ 324.10 What kinds of priorities are authorized under this part?

(a) The priorities under § 324.1(a) must support innovation, development, exchange, and use of advancements in knowledge and practice designed to contribute to the improvement of instruction and learning of infants, toddlers, children, and youth with disabilities.

(b) Under this part, the Secretary may support a wide range of research and related activities designed to—

(1) Advance knowledge regarding the provision of instruction and other interventions to infants, toddlers, children, and youth with disabilities including the—

(i) Organization, synthesis, and interpretation of current knowledge and the identification of knowledge gaps;

(ii) Identification of knowledge and skill competencies needed by personnel providing special education, related services, and early intervention services;

(iii) Improvement of knowledge regarding the developmental and learning characteristics of infants, toddlers, children, and youth with disabilities in order to improve the design and effectiveness of interventions and instruction;

(iv) Evaluation of approaches and interventions;

(v) Development of instructional strategies, techniques, and activities;

(vi) Improvement of curricula and instructional tools such as textbooks, media, materials, and technology;

(vii) Development of assessment techniques, instruments (including tests, inventories, and scales), and strategies for measurement of progress and the identification, location, and evaluation of infants, toddlers, children, and youth with disabilities for the purpose of determining eligibility, program planning, and placement for special education, related services, and early intervention services;

(viii) Testing of research findings in practice settings to determine the application, usability, effectiveness, and generalizability of such research findings;

(ix) Improvement of knowledge regarding families, minorities, limited English proficiency, and disabling conditions; and

(x) Identification of environmental organizational, resource, and other conditions necessary for effective professional practice; and

(2) Advance the use of knowledge by personnel providing special education, related services, and early intervention services including the—

(i) Improvement of knowledge regarding how such individuals learn new knowledge and skills, and strategies for effectively facilitating such learning in preservice, inservice, and continuing education;

(ii) Organization, integration, and presentation of knowledge so that such knowledge can be incorporated and imparted in personnel preparation, continuing education programs, and other relevant training and communication vehicles; and

(iii) Expansion and improvement of networks that exchange knowledge and practice information;

(3) Disseminate information on research and related activities conducted under this part to regional resource centers, interested individuals, and organizations;

(4) conduct research and related activities, surveys, or demonstrations relating to physical education or recreation, including therapeutic recreation, for children with disabilities.

(Authority: 20 U.S.C. 1441(a); 20 U.S.C. 1442)

§ 324.11 [Amended]

106. Section 324.11 is amended by removing "handicapped" and adding "with disabilities" after youth in paragraphs (a), (b), and (b)(1).

107. Section 324.30 is amended by revising paragraph (b) to read as follows:

§ 324.30 How does the Secretary select and announce funding priorities under this program?

* * * * *

(b) Under section 641(c) of the Individuals with Disabilities Education Act, the Secretary publishes proposed research priorities for public comment in the **Federal Register** not later than twelve months preceding the fiscal year for which they are being announced. The Secretary publishes final priorities for this program not later than 90 days after the close of the comment period.

* * * * *

108. In § 324.31 paragraphs (a)(2)(v)(C) and (b)(2)(iv)(C) are amended by removing the words "Handicapped persons" and adding, in their place, the words "Individuals with disabilities" and revising paragraphs (f) and (g) to read as follows:

§ 324.31 What are the selection criteria for evaluating applications for research projects?

* * * * *

(f) *Importance.* (10 points) The Secretary reviews each application to determine the importance of the project in leading to the understanding of, remediation of, or compensation for, the problem or issue that relates to the early intervention with or special education of infants, toddlers, children, and youth with disabilities.

(g) *Impact.* (5 points) The Secretary reviews each application to determine the probable impact of the proposed research and development products and the extent to which those products can be expected to have a direct influence on infants, toddlers, children, and youth with disabilities or personnel responsible for their education or early intervention services.

* * * * *

109. In § 324.32 paragraphs (a)(2)(V)(C) and (b)(2)(iv)(C) are amended by removing the words "Handicapped persons" and adding, in their place, the words "Individuals with disabilities".

110. A new § 324.41 is added to read as follows:

§ 324.41 What other conditions must be met by grantees under this program?

Grantees shall, if appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of such procedures, findings, and information. The Secretary shall require their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under parts C and D of the Act, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and such other networks as the Secretary may determine to be appropriate.

(Authority: 20 U.S.C. 1409(g))

PART 326—SECONDARY EDUCATION AND TRANSITIONAL SERVICES FOR YOUTH WITH DISABILITIES PROGRAM

111. The authority citation for part 326 continues to read as follows:

Authority: 20 U.S.C. 1425, unless otherwise noted.

112. The heading of Part 326 is revised to read as set forth above.

§§ 326.1, 326.10, 326.20, 326.30, 326.32, 326.33, 326.40 [Amended]

113. In 34 CFR part 326 remove the words "handicapped youth" and add, in their place, the words "youth with disabilities" in the following places:

(a) Section 326.1(a)(1), (a)(2)(i), and (b);

(b) Section 326.10(a)(1), (a)(3), and (b);

(c) Section 326.20(b)(2);

(d) Section 326.30(b), (c), (d), (e), (f), (g), and (h);

(e) Section 326.32(g); and

(f) Section 326.33(g).

114. In 34 CFR part 326 remove the words "handicapped students" and add, in their place, the words "students with disabilities" in the following places:

(a) Section 326.1(a)(2)(iii);

(b) Section 326.10(a)(4);

(c) Section 326.20(b)(3); and

(d) Section 326.40 heading and text.

115. In 34 CFR Part 326 remove the words "handicapped individuals" and add, in their place, the words "individuals with disabilities" in the following places:

(a) Section 326.4(c)(2);

(b) Section 326.10(b); and

(c) Section 326.20(a).

§ 326.1 [Amended]

116. In § 326.1 the heading is amended by removing the words "Handicapped Youth", and adding, in their place, the words "Youth with Disabilities", and paragraph (a)(2)(i) is amended by adding the words "independent and community living" before the words "or adult".

§ 326.3 [Amended]

117. In § 326.3 the undesignated introductory text is amended by removing the words "Handicapped Youth" and adding in their place, the words "Youth with Disabilities".

118. In Section 326.3, paragraphs (b)(1), (b)(4) and (b)(5) are revised and paragraphs (b)(6) through (b)(9) are added to read as follows:

(b) * * *

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations);

* * * * *

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(5) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(6) Part 81 (General Education Provisions Act—Enforcement);

(7) Part 82 (New Restrictions on Lobbying);

(8) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirement for Drug-Free Workplace (Grants)); and

(9) Part 86 (Drug-Free Schools and Campuses).

* * * * *

§ 326.4 [Amended]

119. In § 326.4 paragraph (b) is amended by removing the words "Handicapped children" and adding, in their place, the words "Children with disabilities" in the list of terms, and paragraph (c)(1) is amended by removing the words "Handicapped youth" and "handicapped child" and adding, in their place, the words "Youth with disabilities" and "child with disabilities", respectively.

§ 326.10 [Amended]

120. In § 326.10 paragraph (a)(3) is amended by adding the words "independent or community living," before the words "or adult".

§ 326.20 [Amended]

121. Section 326.20(b)(3) is amended by removing the words "To the extent appropriate, provide" and adding in their place the word "Provide".

122. In § 326.30 paragraph (b) is amended by removing the word "specific" and adding, in its place, the words "independent living," and by adding the words "or independent living" before the period at the end of the paragraph; paragraph (i) is amended by removing the words "handicapped youth drop out" and adding, in their place, the words "some youth with disabilities remain to complete school programs while others drop out", and by removing the words "handicapping conditions" and adding, in their place, the word "disabilities"; paragraph (j) is amended by removing the words "special education" and "handicapped students' " and, by adding the words "in special education and related services" after the word "techniques", and "students' with disabilities" after the word "improve", and by revising paragraph (k) and adding a new paragraph (l) to read as follows:

§ 326.30 What priorities are considered for support by the Secretary under this part?

* * * * *

(k) *Physical education and therapeutic recreation.* This priority supports specially designed or adapted physical educational and therapeutic recreation programs to facilitate the full participation of youth with disabilities in community programs.

(l) *Assistive technology.* This priority supports the development and dissemination of exemplary programs and practices that meet the unique needs of students who utilize assistive technology devices and services as these students make the transition to postsecondary education, vocational training, competitive employment (including supported employment), and continuing education or adult services.

(Authority: 20 U.S.C. 1425)

§ 326.32 [Amended]

123. In § 326.32 paragraph (a)(2)(v)(C) is amended by removing the words "Handicapped persons" and adding, in their place, the words "Individuals with disabilities", and paragraph (b)(2)(iv)(C) is amended by removing the words "Handicapped persons" and adding in their place, the words "Individuals with disabilities".

§ 326.33 [Amended]

124. In § 326.33 paragraph (a)(2)(v)(C) is amended by removing the words "Handicapped persons" and adding, in their place, the words "Individuals with disabilities", and paragraph (b)(2)(iv)(C) is amended by removing the words "Handicapped persons" and adding, in their place, the words "Individuals with disabilities".

§ 326.40 [Amended]

125. Section 326.40 is amended by removing the words ", to the extent appropriate,".

126. A new § 326.42 is added to read as follows:

§ 326.42 What other conditions must be met by grantees under this program?

Grantees shall, if appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of such procedures, findings, and information. The Secretary shall require their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under parts C and D of the Act, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and such other networks as the Secretary may determine to be appropriate.

(Authority: 20 U.S.C. 1409(g))

PART 327—SPECIAL STUDIES PROGRAM

127. The authority citation for part 327 continues to read as follows:

Authority: 20 U.S.C. 1418, unless otherwise noted.

128. The heading of Part 327 is revised to read as set forth above.

§ 327.1 [Amended]

129. Section 327.1 is amended by removing the word "Handicapped" from the heading and by removing the words "Education of the Handicapped" from the text, and adding, in their place in the text, the words "Individuals with Disabilities Education".

130. In § 327.2, paragraph (a) is amended by removing the words "in § 327.10 (a)–(b), and (d)–(h)" and adding, in their place, the words "in § 327.10 (a), (b), (d), (f), (h), and (i)", and new paragraphs (c) and (d) are added to read as follows:

§ 327.2 Who is eligible to apply for an award under this program?

* * * * *

(c) In order to carry out the projects described in § 327.10(e), the Secretary may make awards to State or local educational agencies, institutions of higher education, public agencies, and private nonprofit organizations and, when necessary because of the unique nature of the study, private for-profit organizations.

(d) In order to carry out the projects in § 327.10(g), the Secretary may make awards to State or local educational agencies, institutions of higher education, other public agencies, and private nonprofit organizations.

(Authority: 20 U.S.C. 1418)

131. Section 327.3 is amended by revising paragraphs (b)(1), (b)(4), and (b)(5) and adding new paragraphs (b)(6), (b)(7), and (b)(8) to read as follows:

§ 327.3 What regulations apply to this program?

* * * * *

(b) * * *

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations);

* * * * *

(4) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(5) Part 81 (General Education Provisions Act—Enforcement);

(6) Part 82 (New Restrictions on Lobbying);

(7) Part 85 (Governmentwide Debarment and Suspension

(Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and

(8) Part 86 (Drug-Free Schools and Campuses).

(Authority: 20 U.S.C. 1418)

§ 327.4 [Amended]

132. Section 327.4 is amended by removing the designation for paragraph (a) and by removing paragraph (b).

133. Section 327.10 is revised to read as follows:

§ 327.10 What kinds of priorities are authorized under this part?

Priorities authorized under this part include activities to:

(a) Collect data, and conduct studies, investigations, analyses, and evaluations to assess progress in the implementation of the Act, the impact of the Act, and the effectiveness of State and local efforts and efforts by the Secretary of the Interior to provide free appropriate public education to all children and youth with disabilities, and early intervention services to infants and toddlers with disabilities.

(b) Obtain data, on at least an annual basis, about programs and projects assisted under the Act and under other Federal laws relating to the provision of services to infants, toddlers, children, and youth with disabilities as required under section 618(b) of the Act.

(c) Assess the impact and effectiveness of programs, policies, and procedures assisted under the Act, in accordance with sections 618(d)(1) and (2) of the Act, through cooperative agreements with State agencies.

(d) Provide technical assistance to participating State agencies in the implementation of the evaluation studies described under paragraph (c) of this section.

(e)(1) Support studies, analyses, syntheses, and investigations for improving program management, administration, delivery, and effectiveness necessary to provide full educational opportunities and early interventions for all children with disabilities from birth through age 21. Such studies and investigations shall gather information necessary for program and system improvements, including—

(i) Developing effective, appropriate criteria and procedures to identify, evaluate, and serve infants, toddlers, children, and youth with disabilities from minority backgrounds for purposes of program eligibility, program planning, delivery of services, program placement, and parental involvement;

(ii) Planning and developing effective early intervention services, special education, and related services to meet the complex and changing needs of infants, toddlers, children, and youth with disabilities;

(iii) Developing and implementing a comprehensive system of personnel development needed to provide qualified personnel in sufficient number to deliver special education, related services, and early intervention services;

(iv) Developing the capacity to implement practices having the potential to integrate children with disabilities to the maximum extent appropriate, with children who are not disabled;

(v) Effectively allocating and using human and fiscal resources for providing early intervention, special education, and related services;

(vi) Strengthening programs and services to improve the progress of children and youth with disabilities while in special education, and to effect a successful transition when such children and youth leave special education;

(vii) Achieving interagency coordination to maximize resource utilization and continuity in services provided to infants, toddlers, children, and youth with disabilities;

(viii) Strengthening parent-school communication and coordination to improve the effectiveness of planning and delivery on interventions and instruction, thereby enhancing development and educational progress; and

(ix) Identifying the environmental, organizational, resource, and other conditions necessary for effective professional practice.

(2) The studies and investigations under paragraph (e)(1) of this section may be conducted through surveys, interviews, case studies, program implementation studies, secondary data analyses and synthesis, and other appropriate methodologies.

(3) The studies and investigations under paragraph (e)(1) of this section shall address the information needs of State and local educational agencies for improving program management, administration, delivery, and effectiveness.

(f)(1) Support special studies to assess progress in the implementation of the Act, and assess the impact and effectiveness of State and local efforts and efforts by the Secretary of the Interior to provide free appropriate public education to children and youth with disabilities, and early intervention services to infants and toddlers with disabilities. Reports from these studies must include recommendations for improving services to individuals.

(2) In selecting priorities for 1991 through 1994, the Secretary may give first preference to—

(i) Completing a longitudinal study of a sample of students with disabilities. examining—

(A) The full range of disabling conditions;

(B) The educational progress of students with disabilities while in special education; and

(C) The occupational, educational, and independent living status of students with disabilities after graduating from secondary school or otherwise leaving special education;

(ii) Conducting a nationally representative study focusing on the types, number, and intensity of related services provided to children with disabilities by disability category;

(iii) Conducting a study that examines the degree of disparity among States with regard to the placement in various educational settings of children and youth with similar disabilities, especially those with mental retardation, and, to the extent that such disparity exists, the factors that lead these children and youth to be educated in significantly different educational settings;

(iv) Conducting a study that examines the factors that have contributed to the decline in the number of children classified as mentally retarded since the implementation of the Act, and examines the current disparity among States in the percentage of children so classified;

(v) Conducting a study that examines the extent to which out-of-community residential programs are used for children and youth who are seriously emotionally disturbed, the factors that influence the selection of such placements, the degree to which such individuals transition back to education programs in their communities, and the factors that facilitate or impede such transition; and

(vi) Conducting a study that examines the—

(A) Factors that influence the referral and placement decisions and types of placements, by disability category and English language proficiency, of minority children relative to other children;

(B) Extent to which these children are placed in regular education environments;

(C) Extent to which the parents of these children are involved in placement decisions and in the development and implementation of the individualized education program and the results of such participation; and

(D) Type of support provided to parents of these children that enable these parents to understand and participate in the educational process.

(g)(1) Support activities that organize, synthesize, interpret, and integrate information obtained under paragraphs (e) and (f) of this section, with relevant knowledge obtained from other sources.

(2) These activities include the selection and design of content, formats, and means for communicating such information effectively to specific or general audiences, in order to promote the use of such information in improving program administration and management, and service delivery and effectiveness.

(h) Assist in the development of the annual report to the Congress required under section 618(g) of the Act.

(i) Provide technical assistance to State agencies providing the data described in section 618(b) (1) and (2) of the Act to achieve accurate and comparable information.

(Authority: 20 U.S.C. 1418)

134. Section 327.30 is revised to read as follows:

§ 327.30 How does the Secretary establish priorities for an award?

Section 618(e)(1) of the Individuals with Disabilities Education Act requires that beginning in fiscal 1993 and every three years thereafter, the Secretary submit to the appropriate committee of each House of the Congress and publish in the **Federal Register** proposed priorities under the special studies described in § 307.10(f) for review and comment.

(Authority: 20 U.S.C. 1418)

§ 327.31 [Amended]

135. In § 327.31 paragraphs (a)(2)(v)(C) and (b)(2)(iv)(C) are amended by removing the words "Handicapped persons" and adding, in their place, the words "Individuals with disabilities"; paragraphs (g) and (g)(2) are amended by removing the word "handicapped" and adding the words "with disabilities" after the word "youth"; and paragraph (g)(3) is amended by removing the words "Education of the Handicapped" and adding, in their place, the words "Individuals with Disabilities Education".

136. Section 327.40 is amended by revising paragraph (b) to read as follows:

§ 327.40 What are the requirements for conducting projects?

* * * * *

(b) Develop the study in consultation with the State advisory panel established under the Act, local educational agencies and others involved in, or concerned with, the education of children and youth with disabilities and the provision of early intervention services to infants and toddlers with disabilities.

(Authority: 20 U.S.C. 1418(c), (d)(2))

137. A new § 327.41 is added to read as follows:

§ 327.41 What conditions must be met by a recipient of an award under this program?

Recipients of awards under § 327.10(e) must prepare their procedures, findings, and other relevant information in a form that will maximize their dissemination and use, especially through dissemination networks and mechanisms authorized by the Act, and in a form for inclusion in the annual report to Congress under section 618(g) of the Act.

(Authority: 20 U.S.C. 1418(c))

PART 330—CAPTIONED FILMS INCLUDING VIDEOS LOAN SERVICE PROGRAM FOR DEAF AND HARD OF HEARING INDIVIDUALS

138. The authority citation for part 330 continues to read as follows:

Authority: 20 U.S.C. 1451, 1452, unless otherwise noted.

139. The heading of part 330 is revised to read as set forth above.

140. Section 330.1 is revised to read as follows:

§ 330.1 Captioned Films Including Videos Loan Service Program.

The Captioned Films Including Videos Loan Service Program promotes the general welfare for deaf and hard of hearing individuals by—

(a) Bringing to deaf and hard of hearing individuals understanding and appreciation of those films that play an important part in the general and cultural advancement of hearing individuals;

(b) Providing enriched educational and cultural experiences through which deaf and hard of hearing individuals can be brought into better touch with the realities of their environment;

(c) Providing a wholesome and rewarding experience that deaf and hard of hearing individuals may share together; and

(d) Addressing the problems of illiteracy among deaf and hard of hearing individuals.

(Authority: 20 U.S.C. 1451, 1452)

141. Section 330.2 is revised to read as follows:

§ 330.2 Who is eligible to apply under the Captioned Films Including Videos Loan Service Program?

The following are eligible to apply to borrow captioned films and videos:

(a) Deaf and hard of hearing individuals.

(b) Parents of deaf and hard of hearing individuals.

(c) Other individuals directly involved in activities promoting the advancement of deaf and hard of hearing individuals in the United States.

(Authority: 20 U.S.C. 1452(a))

§ 330.4 [Amended]

142. Section 330.4 is amended in paragraph (b) by revising the definitions of "Act" and "Media" to read as follows:

* * * * *

(b) * * *

Act means Individuals With Disabilities Education Act.

* * * * *

Media means films, filmstrips, photographs and slides, transparencies, television, audio and video tapes, audio and video discs, and similar materials. Printed materials may also be included if in combination with one or more of the preceding.

* * * * *

143. In § 330.50 paragraph (b) is revised to read as follows:

§ 330.50 What are the limitations on the use of the loans service?

* * * * *

(b) In accordance with agreements with producers and distributors, a borrower shall show theatrical films to deaf and hard of hearing individuals only. However, this does not exclude the attendance of teachers of deaf and hard of hearing individuals, interpreters, parents, and occasional guests as long as the audience is composed predominantly of deaf and hard of hearing individuals.

(Authority: 20 U.S.C. 1452(a), (b)(1))

PART 331—EDUCATIONAL MEDIA AND DESCRIPTIVE VIDEOS LOAN SERVICE PROGRAM FOR INDIVIDUALS WITH DISABILITIES

144. The authority citation for Part 331 continues to read as follows:

Authority: 20 U.S.C. 1452, unless otherwise noted.

145. The heading of part 331 is revised to read as set forth above.

146. Section 331.1 is revised to read as follows:

§ 331.1 Educational Media and Descriptive Videos Loan Service Program.

The Educational Media and Descriptive Video Loan Service Program—

(a) Makes educational media and descriptive videos available in the United States for nonprofit purposes to individuals with disabilities, parents of individuals with disabilities, and other individuals directly involved in activities for the advancement of individuals with disabilities; and utilizes educational media to help eliminate illiteracy among individuals with disabilities; and

(b) Promotes the general welfare of visually impaired individuals by—

(1) Bringing to these individuals an understanding and appreciation of textbooks, films, television programs, video material, and other educational publications and materials that play such an important part in the general and cultural advancement of visually unimpaired individuals; and

(2) Ensuring access to television programming and other video materials.

(Authority: 20 U.S.C. 1452(a))

147. Section 311.2 is revised to read as follows:

§ 331.2 Who is eligible to apply under the Educational Media and Descriptive Videos Loan Service Program?

The following are eligible to apply to borrow educational media and descriptive videos:

(a) Individuals with disabilities.

(b) Parents of individuals with disabilities.

(c) Other persons directly involved in activities for the advancement of individuals with disabilities in the United States.

(Authority: 20 U.S.C. 1452(a))

148. In § 331.4 the heading is revised and paragraph (b) is amended by revising the definitions of "Act" and "Media" to read as follows:

§ 331.4 What definitions apply to the Educational Media and Descriptive Videos Loan Service Program?

* * * * *

(b) * * *

Act means Individuals with Disabilities Education Act.

* * * * *

Media means films, filmstrips, photographs and slides, transparencies, television, audio and video tapes, audio and video discs, and similar materials. Printed materials may also be included if in combination with one or more of the preceding.

* * * * *

PART 332—EDUCATIONAL MEDIA RESEARCH, PRODUCTION, DISTRIBUTION, AND TRAINING

149. The authority citation for part 332 continues to read as follows:

Authority: 20 U.S.C. 1451, 1452, unless otherwise noted.

150. Section 332.1 is revised to read as follows:

§ 332.1 Educational Media Research, Production, Distribution, and Training Program.

The purposes of this program are to promote:

(a) The general welfare of deaf and hard of hearing individuals by—

(1) Bringing to such individuals understanding and appreciation of those films and television programs that play such an important part in the general and cultural advancement of hearing individuals;

(2) Providing through these films and television programs enriched educational and cultural experiences through which deaf and hard of hearing individuals can be brought into better touch with the realities of their environment;

(3) Providing a wholesome and rewarding experience that deaf and hard of hearing individuals may share together; and

(b) The educational advancement of individuals with disabilities by—

(1) Carrying on research in the use of educational media for individuals with disabilities;

(2) Producing and distributing educational media for the use of individuals with disabilities, their parents, their actual or potential employers, and other individuals directly involved in work for the advancement of individuals with disabilities;

(3) Training individuals in the use of educational media for the instruction of individuals with disabilities; and

(4) Utilizing educational media to help eliminate illiteracy among individuals with disabilities; and

(c) The general welfare of visually impaired individuals by—

(1) Bringing to such individuals an understanding and appreciation of textbooks, films, television programs, video material, and other educational publications and materials that play such an important part in the general and cultural advancement of visually unimpaired individuals; and

(2) Ensuring access to television programming and other video materials.

(Authority: 20 U.S.C. 1451)

151. In § 332.2 add after "institutions", "except only the National Theatre of the Deaf, Inc. and other appropriate non-profit organizations are eligible for a grant, contract, or cooperative agreement under § 332.10(f)."

152. Section 332.3 is revised to read as follows:

§ 332.3 What regulations apply to this program?

(a) The Education Department General Administrative Regulations (EDGAR) in the following parts of title 34 of the Code of Federal Regulations—

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions That Apply to Department Regulations);

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(5) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(6) Part 81 (General Education Provisions Act—Enforcement);

(7) Part 82 (New Restrictions on Lobbying);

(8) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for a Drug-Free Workplace (Grants)); and

(9) Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 332.

(Authority: 20 U.S.C. 1221e–3(a)(1))

§ 332.4 [Amended]

153. In § 332.4 the definition of "Media" in paragraph (b) is amended by adding "television," after the word "transparencies".

154. In § 332.4 the definition of "Act" in paragraph (b) is amended by removing the words "Education of the Handicapped" and adding, in their place, the words "Individuals with Disabilities Education".

§ 332.10 [Amended]

155. In § 332.10 paragraphs (a), (a)(1), (a)(4), (b), and (e) are amended by removing the words "handicapped persons" and adding, in their place, the words "individuals with disabilities" and new paragraphs (f), (g), (h), and (i) are added to read as follows:

* * * * *

(f) Provision of cultural experiences to enrich the lives of deaf and hard of hearing children and adults, increase public awareness and understanding of deafness and of the artistic and intellectual achievements of deaf and

hard of hearing individuals, and promote the integration of hearing and deaf and hard of hearing individuals through shared cultural, educational, and social experiences.

(g) Captioning for deaf and hard of hearing individuals and video describing for the visually impaired of films, television programs, and video materials.

(h) Provision of current, free textbooks and other educational publications and materials to blind and other print-handicapped students in elementary, secondary, postsecondary, and graduate schools and other institutions of higher education through the medium of transcribed tapes and cassettes. The term "print-handicapped" refers to any individual who is blind as severely visually impaired, or who, by reason of a physical or perceptual disability, is unable to read printed material unassisted.

(i) Distribution of captioned and video-described films, video materials, and other educational media and equipment through State schools for individuals with disabilities, public libraries, and such other agencies or entities as the Secretary deems appropriate to serve as local or regional centers for such distribution.

(Authority: 20 U.S.C. 1452)

§ 332.30 [Amended]

156. In § 332.30, paragraph (b) is amended by removing the words "handicapping condition or conditions" and adding, in their place, the words "disability or disabilities".

§ 332.32 [Amended]

157. In § 332.32, (a)(2)(v)(A) and (b)(2)(iv)(A) are amended by removing the words "Handicapped persons" and adding, in their place, the words "Individuals with disabilities".

158. In § 332.32(f)(2)(i) is amended by removing the words "handicapping condition" and adding, in their place, the word "disability".

159. A new § 332.41 is added to read as follows:

§ 332.41 What other conditions must be met by grantees under this program?

Grantees shall, if appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of such procedures, findings, and information. The Secretary shall require their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under parts C and D of the Act, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and such other networks as the Secretary may determine to be appropriate.

(Authority: 20 U.S.C. 1409(g))

PART 333—TECHNOLOGY, EDUCATIONAL MEDIA, AND MATERIALS FOR INDIVIDUALS WITH DISABILITIES PROGRAM

160. The authority citation for part 333 continues to read as follows:

Authority: 20 U.S.C. 1461–1462, unless otherwise noted.

161. The heading of Part 333 is revised to read as set forth above.

162. Section 333.1 is revised to read as follows:

§ 333.1 What is the Technology, Educational Media, and Materials for Individuals with Disabilities Program?

The purpose of this program is to support projects and centers for advancing the availability, quality, use, and effectiveness of technology, and educational media and materials in the education of children and youth with disabilities, and the provision of related services and early intervention services to infants and toddlers with disabilities.

(Authority: 20 U.S.C. 1461)

163. Section 333.2 is amended by redesignating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 333.2 Who is eligible for an award?

* * * * *

(b) The Secretary does not award a grant, contract, or cooperative agreement for the activities described in § 333.3 (a) through (f) unless the applicant for such assistance agrees that activities carried out with the assistance will be coordinated, as appropriate, with the State entity receiving funds under the Technology-Related Assistance for Individuals with Disabilities Act of 1988 (title 1 of Public Law 100–407).

(Authority: 20 U.S.C. 1461)

164. Section 333.3 is amended by revising the heading; adding "assistive technology," before the words "educational media" in paragraphs (a), (b), (c), (d), (e), and (f); and adding new paragraphs (g) and (h) to read as follows:

§ 333.3 What priorities does the Secretary consider for support under this part?

* * * * *

(g) Increasing access to and use of assistive technology devices and assistive technology services in the education of infants, toddlers, children, and youth with disabilities, and other activities authorized under the Technology-Related Assistance for Individuals with Disabilities Act of 1988 as such Act relates to the education of students with disabilities.

(h) Examining how these purposes can address the problem of illiteracy among individuals with disabilities.

(Authority: 20 U.S.C. 1461)

165. The heading for § 333.4 is revised to read as follows:

§ 333.4 How does the Secretary select and announce funding priorities under this program?

* * * * *

166. Section 333.5 is amended by revising paragraph (a)(1) to read as follows:

§ 333.5 What regulations apply to this program?

(a) * * *

(1) The Education Department General Administrative Regulations (EDGAR) in the following parts of title 34 of the Code of Federal Regulations—

(i) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations);

(ii) Part 75 (Direct Grant Programs);

(iii) Part 77 (Definitions that Apply to Department Regulations);

(iv) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(v) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(vi) Part 81 (General Education Provisions Act—Enforcement);

(vii) Part 82 (New Restrictions on Lobbying);

(viii) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and

(ix) Part 86 (Drug-Free Schools and Campuses)

* * * * *

§ 333.6 [Amended]

167. In § 333.6 paragraph (b) is amended by removing the words "Handicapped children" and adding, in their place, the words "Children with disabilities"; and paragraph (c) is amended by removing the word

"handicaps" and adding, in its place, the word "disabilities".

§ 333.21 [Amended]

168. In § 333.21 paragraph (d)(2)(iv) is amended by removing the word "handicapping" and adding, in its place, the word "disabling"; and paragraph (f)(1) is amended by removing the word "handicaps" and adding, in its place, the word "disabilities".

§ 333.22 [Amended]

169. In § 333.22 paragraphs (c)(2)(iii) and (e)(2)(iv) are amended by removing the word "handicapping" and adding, in its place, the word "disabling" both times it appears.

170. A new § 333.31 is added to read as follows:

§ 333.31 What other conditions must be met by grantees under this program?

Grantees shall, if appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of such procedures, findings, and information. The Secretary shall require their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under parts C and D of the Act, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and such other networks as the Secretary may determine to be appropriate.

(Authority: 20 U.S.C. 1409(g))

PART 338—POSTSECONDARY EDUCATION PROGRAMS FOR INDIVIDUALS WITH DISABILITIES

171. The authority citation for part 338 continues to read as follows:

Authority: 20 U.S.C. 1424a, unless otherwise noted.

172. The heading for part 338 is revised to read as set forth above.

173. Section 338.1 is revised to read as follows:

§ 338.1 What are the Postsecondary Education Programs for Individuals with Disabilities?

The Postsecondary Education Programs for Individuals with Disabilities provide assistance for the development, operation, and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for individuals with disabilities. Such model programs may include joint projects that coordinate with special education and transitional services.

(Authority: 20 U.S.C. 1424a)

§ 338.3 [Amended]

174. In § 338.3 the undesignated introductory text is amended by removing the words "Handicapped Persons" and adding, in their place, the words "Individuals with Disabilities".

175. Section 338.3 is amended by revising paragraph (b)(1), (b)(4) and (b)(5) and adding paragraphs (b)(6) through (b)(9) to read as follows:

(b) * * *

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

* * * * *

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(5) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(6) Part 81 (General Education Provisions Act—Enforcement);

(7) Part 82 (New Restrictions on Lobbying);

(8) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for a Drug-Free Workplace (Grants)); and

(9) Part 86 (Drug-Free Schools and Campuses).

* * * * *

176. In § 338.4 paragraph (c) is revised to read as follows:

§ 338.4 What definitions apply to these programs?

* * * * *

(c) *Other definitions.* "Individuals with disabilities" means individuals—

(1) With mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(2) Who, by reason thereof, need special education and related services.

(Authority: 20 U.S.C. 1424a(b))

§§ 338.10, 338.20, 338.31 [Amended]

177. In 34 CFR part 338 remove the words "handicapped individuals" and add, in their place, the words "individuals with disabilities" in the following places:

(a) Section 338.10(a)(2)(i), (a)(2)(ii), (a)(2)(iv), (a)(3), and (a)(4);

(b) Section 338.20(b); and

(c) Section 338.31(h).

§ 338.10 [Amended]

178. In § 338.10 paragraph (a)(2) is amended by removing the word "handicapping" and adding, in its place, the word "disabling"; paragraph (a)(2)(i) is amended by removing the word "nonhandicapped" and adding, in its place, the word "nondisabled"; paragraph (b)(11) is amended by removing the words "handicapped participants" and adding, in their place, the words "participants with disabilities"; and paragraph (a)(2)(ii) is revised to read as follows:

§ 338.10 What kinds of activities may be supported under this part?

(a) * * *

(2) * * *

(iii) Outreach activities that include the provision of technical assistance to strengthen efforts in the development, operation, and design of model programs that are adapted to the special needs of individuals with disabilities.

* * * * *

§ 338.20 [Amended]

179. In § 338.20 paragraph (a) is amended by removing the word "handicapping" and adding, in its place, the word "disabling".

§ 338.30 [Amended]

180. In § 338.30 paragraph (b) is amended by removing "(5)" and adding, in its place "(4)"; and paragraph (c) is amended by removing the word "handicapping" and adding, in its place, the word "disabling".

§ 338.31 [Amended]

181. In § 338.31 paragraphs (a)(2)(v)(C) and (b)(2)(iv)(C) are amended by removing the words "Handicapped persons" and adding, in their place, the words "Individuals with disabilities".

182. A new § 338.41 is added to read as follows:

§ 338.41 What other conditions must be met by grantees under this program?

Grantees shall, if appropriate, prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of such procedures, findings, and information. The Secretary shall require their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical

Assistance to Parents Program (TAPP) assisted under parts C and D of the Act, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and such other networks as the Secretary may determine to be appropriate.

(Authority: 20 U.S.C. 1409(g))

[FR Doc. 91-25048 Filed 10-21-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.026T]

Educational Media Research, Production, Distribution, and Training Program; Inviting Applications for New Awards for Fiscal Year (FY) 1992

Purpose of Program: To provide Federal assistance in promoting the general welfare of deaf and hard of hearing individuals by—

(1) Bringing to such individuals understanding and appreciation of those films and television programs that play such an important part in the general and cultural advancement of hearing individuals;

(2) Providing through these films and television programs enriched educational and cultural experiences through which deaf and hard of hearing individuals can be brought into better touch with the realities of their environment; and

(3) Providing wholesome and rewarding experiences that deaf and hard of hearing individuals may share.

Eligible Applicants: Appropriate nonprofit organizations under 652(c) of the Individuals with Disabilities Education Act (1990), and 34 CFR 332.2 and 332.10(f), as published in this issue of the **Federal Register**.

Deadline for Transmittal of Applications: January 31, 1992.

Deadline for Intergovernmental Review: March 31, 1992.

Applications Available: October 25, 1991.

Available Funds: $200,000.

Estimated Range of Awards: $75,000–$125,000.

Estimated Size of Awards: $100,000.

Estimated Number of Awards: 2.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations, 34 CFR parts 74, 75, 77, 79, 81, 82, and 85; and (b) the regulations for this program in 34 CFR part 332, as published in this issue of the **Federal Register**.

Priority: This priority in the notice of final regulations for this program, as published in this issue of the **Federal Register**, applies to this competition.

Priority 1: Cultural Experiences for Deaf and Hard of Hearing Individuals

This priority supports two cooperative agreements that will provide cultural experiences to enrich the lives of deaf and hard of hearing individuals as described in the newly revised program regulations at 34 CFR 332.10(f) published in this issue of the **Federal Register**.

Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet the following invitational priority:

(a) Applications that provide for the presentation of theatrical experiences for deaf and hard of hearing;

(b) Applications that utilize an integrated approach by having among cast members a mixture of deaf, hard of hearing and hearing performers; and

(c) Applications that have deaf or hard of hearing individuals in key administrative positions.

However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications that do not meet the individual priority.

Selection Criteria: Applications submitted in response to this priority will be evaluated using criteria in 34 CFR 332.32.

For Application or Information Contact: Joseph Clair, Division of Educational Services, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, room 4622), Washington, DC. 20202. Telephone: Joseph Clair (202) 732–4503 (voice) or Ernie Hairston (202) 732–1169 (TDD).

Program Authority: 20 U.S.C. 1451, 1452.

Dated: October 11, 1991.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 91–25049 Filed 10–21–91; 8:45 am]

BILLING CODE 4000–01–M

federal register

Tuesday
October 22, 1991

Part VII

Department of Labor

Employment and Training Administration
Employment Standards Administration
Office of the Secretary
Wage and Hour Division
Pension and Welfare Benefits Administration

20 CFR Part 629, et al.
29 CFR Part 6, et al.
Office of the Administrative Law Judges; Change of Address; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

Employment Standards Administration

Office of the Secretary

Wage and Hour Division

Pension and Welfare Benefits Administration

20 CFR Parts 629, 636, 656, 658, and 725; and 29 CFR Parts 6, 18, 500, 579, 580, and 2570

Office of the Administrative Law Judges; Change of Address

AGENCY: Employment and Training Administration, Employment Standards Administration, Office of the Secretary, and Wage and Hour Division, Labor.

ACTION: Technical amendment.

SUMMARY: This document amends various sections of the Department of Labor's regulations relating to the Office of the Administrative Law Judges in order to notify the public that the Judges are moving to a new address and that all correspondence and litigation pleadings are to be mailed to and filed at this new address.

EFFECTIVE DATE: October 22, 1991.

FOR FURTHER INFORMATION CONTACT: John Vittone, Deputy Chief Administrative Law Judge, Office of Administrative Law Judges, telephone number (202) 633–0330.

SUPPLEMENTARY INFORMATION: On August 19, 1991 the Office of the Administrative Law Judges moved to new offices at Tech World next to the D.C. Convention Center. The new address is: Office of Administrative Law Judges, U.S. Department of Labor, 800 K Street, NW., suite 400, Washington, DC 20001–8002, Telephone: (202) 633–0330.

This document amends the relevant sections of the Code of Federal Regulations in order to present the new address for the Office of the Administrative Law Judges.

Publication in Final

The Department has determined that these amendments need not be published as a proposed rule, as generally required by the Administrative Procedure Act (APA) (5 U.S.C. 553) since this rule-making merely reflects agency organization, procedure, or practice. It is thus exempt from notice and comment by virtue of section 553(b)(A) of the APA (5 U.S.C. 553(b)(A)).

Effective Date

This document will become effective upon publication pursuant to 5 U.S.C. 553(d). The undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. This determination is based upon the fact that the rule is technical and non-substantive, and merely reflects agency organization, practice and procedure.

Executive Order 12291

This rule is not classified as a "rule" under Executive Order 12291 on Federal Regulation, because it is a regulation relating to agency organization, management or personnel. See section 1(a)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the APA, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601) pertaining to regulatory flexibility analysis do not apply to this rule. See 5 U.S.C. 601(2).

Paperwork Reduction Act

This final rule is not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since it does not contain any new collection of information requirements.

Accordingly, Titles 20 and 29 of the Code of Federal Regulations is amended as follows:

In the list below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
629.57(c)(1)	Room 700, Vanguard Building, 1111 20th Street, NW., Washington, DC 20036.	800 K Street, NW., Suite 400, Washington, DC 20001–8002.
636.10(a)(1)	Suite 700, Vanguard Building, 1111 20th Street, NW., Washington, DC 20036.	800 K Street, NW., Suite 400, Washington, DC 20001–8002.
656.26(c)(2)	Suite 700, Vanguard Building, 1111 20th Street, NW., Washington, DC 20036.	800 K Street, NW., Suite 400, Washington, DC 20001–8002.
658.424(a)(3)	1111 20th Street, NW., Washington, DC 20036	800 K Street, NW., Suite 400, Washington, DC 20001–8002.
725.101(a)(13)	1111 20th Street, NW., Washington, DC 20036	800 K Street, NW., Suite 400, Washington, DC 20001–8002.
	Title 29—Labor	
6.2(c)	1111 20th Street NW., Washington, DC 20036	800 K Street, NW., Suite 400, Washington, DC 20001–8002.
18.3(a)	Suite 600, 1111 Twentieth Street, NW., 20036	800 K Street, NW., Suite 400, Washington, DC 20001–8002.
500.20(b)	Washington, DC 20210	800 K Street, NW., Suite 400, Washington, DC 20001–8002.
579.2 (where the term "Chief Administrative Law Judge" is defined).	Washington, DC. 20210	800 K Street, NW., Suite 400, Washington, DC 20001–8002.
580.5	Washington, DC. 20210	800 K Street, NW., Suite 400, Washington, DC 20001–8002.
580.10	Washington, DC. 20210	800 K Street, NW., Suite 400, Washington, DC 20001–8002.
2570.62(a)	Suite 700, 1111 Twentieth Street, Washington, DC. 20036	800 K Street, NW., Suite 400, Washington, DC 20001–8002.

Signed at Washington, DC this 2nd day of October, 1991.

Lynn Martin,

Secretary of Labor.

[FR Doc. 91–25004 Filed 10–21–91; 8:45 am]

BILLING CODE 4510–20–M

federal register

Tuesday
October 22, 1991

Part VIII

Department of Defense

Corps of Engineers, Department of the Army

33 CFR Part 242

Flood Plain Management Services Program; Establishment of Fees for Cost Recovery; Final Rule

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 242

Flood Plain Management Services Program; Establishment of Fees for Cost Recovery

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: Pursuant to section 321 of the Water Resources Development Act of 1990 (Pub. L. 101–640), the Department of the Army is instituting procedures to recover the costs of services provided to Federal agencies and private persons under the U.S. Army Corps of Engineers Flood Plain Management Services Program. This rule sets forth a Fee Schedule of charges that will be used by the Corps to recover the cost of designated services.

EFFECTIVE DATE: November 21, 1991.

ADDRESSES: HQUSACE, ATTN: CECW–PF, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Jerome Q. Peterson at (202) 272–0169.

SUPPLEMENTARY INFORMATION: On June 5, 1991, the Department of Army published for comment in the **Federal Register** (Vol. 56, Page 25643) a proposed rule to use a Fee Schedule to recover the cost of services provided to Federal agencies and private persons under the Corps of Engineers Flood Plain Management Services Program. In response, several comments were received from one individual, one association, and two Federal agencies. Some of the comments pointed out the significance of the past benefits resulting from providing Flood Plain Management Services without charge, opposed application of the "Beneficiary Pay" principle to the Flood Plain Management Services Program, and expressed concern over perceived negative long-term economic impacts resulting from charging for services. Others acknowledged the cost recovery requirements of the proposed rule and expressed the opinion that the charges contained in the Fee Schedule were reasonable. One commenter recommended specific changes to the Fee Schedule and another requested exemptions from the rule.

Response to Comments

An individual recommended that all tasks taking up to one-half hour be provided without charge and opposed charging for data that did not require technical evaluation (Level 1 of the Fee Schedule). The Fee Schedule contains five levels of charges covering tasks taking from ten minutes to one day. In attempting to recover as much of the total cost as practical, the Corps determined that ten minutes was the point after which it was feasible to begin charging for tasks and that all costs, including those of Level 1 for handling, reproducing, and transmitting data, should be recovered.

One Federal agency suggested that the Corps consider providing exemptions for those Federal agencies which historically have worked with the Corps in developing and disseminating flood plain information. The agency recommended that the free exchange of information between the Corps and other Federal agencies with related responsibilities be continued. The Corps recognizes that the exchange of available data between agencies is mutually beneficial and therefore will not charge for those activities. However, in cases where data must be developed or additional technical evaluation performed or new studies conducted for another Federal agency, the Corps will recover those costs.

Changes in the Proposed Rule

The final analysis of the comments resulted in no substantive changes to the language in the proposed rule for establishing the Fee Schedule. However, some editorial changes have been made.

This rule does not contain a major proposal requiring the preparation of a regulatory impact analysis under Executive Order 12291.

This rule will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 33 CFR Part 242

Administrative practice and procedure, Cost recovery, Fee schedule, Floods, Flood plains, Flood plain management services, Water resources.

For the reasons set out in the preamble, 33 CFR part 242 is added to read as follows:

PART 242—FLOOD PLAIN MANAGEMENT SERVICES PROGRAM ESTABLISHMENT OF FEES FOR COST RECOVERY

Sec.

242.1 Purpose.
242.2 Applicability.
242.3 References.
242.4 Definitions.
242.5 General.
242.6 Fee schedule.

Authority: Section 321 of Pub. L. 101–640, 74 Stat. 500 (33 U.S.C. 709a).

§ 242.1 Purpose.

This part gives general instructions on the implementation of section 321 of Public Law 101–640, 74 Stat. 500 (33 U.S.C. 709a) as it applies to the use of a Fee Schedule for recovering the cost of providing Flood Plain Management Services to Federal agencies and private persons.

§ 242.2 Applicability.

This part applies to all HQUSACE elements, Major Subordinate Commands, and District Commands of the Corps of Engineers having Civil Works responsibilities.

§ 242.3 References.

The references in paragraphs (b) and (c) of this section may be obtained from USACE Pub. Depot, CEIM–SP–D, 2803 52d Avenue, Hyattsville, MD 20781–1102.

(a) Section 321, Public Law 101–640, 74 Stat. 500 (33 U.S.C. 709a).

(b) Corps of Engineers Engineering Regulation 1105–2–100, Planning Guidance Notebook.

(c) Corps of Engineers Engineering Pamphlet 37–1–4, Cost of Doing Business.

§ 242.4 Definitions.

As used in this part:

Private persons means all entities in the private sector, including but not limited to individuals, private institutions, sole proprietorships, partnerships, and corporations.

Total cost means total labor charges which include adjustments for benefits, administrative overhead, and technical indirect costs. These terms are described in the reference in § 242.3 (c).

§ 242.5 General.

(a) The Corps of Engineers Flood Plain Management Services Program provides a wide range of flood plain and related assistance upon request. Depending on the complexity of the request, either a nonnegotiated Fee Schedule or a negotiated agreement will be used to recover the cost of services provided to Federal agencies and private persons. This part involves only the nonnegotiated Fee Schedule.

(b) State, regional, or local governments or other non-Federal public agencies will be provided Flood Plain Management Services without charge.

§ 242.6 Fee schedule.

(a) *General.* The Fee Schedule described in this section will be used to

recover the cost for Flood Plain Management Services requiring more than ten minutes and up to one work day to provide. The Fee Schedule has been designed to minimize administrative costs and to allow the flexibility needed to recover the approximate total costs for services provided to Federal agencies and private persons.

(b) *Level of effort.* For establishing charges, services covered by the Fee Schedule have been divided into five levels as follows:

(1) Level 1 includes the provision of basic information from readily available data that does not require technical evaluation or documentation and is transmitted by form letter to the customer.

(2) Level 2 includes the provision of information from readily available data that requires minimal technical evaluation and is transmitted by form letter to the customer.

(3) Level 3 includes the provision of information that requires some file search, a brief technical evaluation, and documentation of results by a form letter or brief composed letter to the customer.

(4) Level 4 includes the provision of information and assistance that requires moderate file search, a brief technical evaluation, and documentation of results in a composed letter to the customer.

(5) Level 5 includes the provision of information and assistance that requires significant file search or retrieval of archived data, a moderate technical evaluation, and documentation of results in a brief letter report to the customer.

(c) *Charge determination.* The Fee Schedule will be used Corps-wide. As requests are received, the responding office will select the appropriate level on the Fee Schedule to determine the charge for providing the service.

(d) *Provision of services.* The services will be provided on a first-come, first-served basis after payment has been received.

(e) *Fees.* The Fee Schedule, including a brief description of the services in each of the five levels and the related charges, is shown in Table 1 to this section. The fee for each level is based on a Corps-wide average of estimated current costs for providing that level of service.

(f) *Review and revision of fees.* The fees shown in the Fee Schedule will be reviewed each fiscal year using the most current cost data available. If necessary, the Fee Schedule will be revised after public notice and comment.

TABLE 1 TO § 242.6—FEE SCHEDULE; STANDARD CORPS-WIDE CHARGES FOR FPMS TASKS REQUIRING MORE THAN TEN MINUTES AND UP TO ONE DAY

Level	Description of work	Fee
1	Basic information from readily available data that does not require technical evaluation or documentation and is transmitted by form letter...	$25
2	Information from readily available data that requires minimal technical evaluation which is transmitted by form letter...	55
3	Information that requires some file search, brief technical evaluation, and documentation of results by a form letter or by a brief composed letter...	105
4	Information and assistance that requires moderate file search, brief technical evaluation, and documentation of results in a composed letter...	165
5	Information and assistance that requires significant file search or retrieval of archived data, moderate technical evaluation, and documentation of results in a brief letter report...	325

Dated: October 4, 1991.

Approved:

Nancy P. Dorn,

Assistant Secretary of the Army (Civil Works).

[FR Doc. 91-25123 Filed 10-21-91; 8:45 am]

BILLING CODE 3710-02-M

Federal Register

Tuesday
October 22, 1991

Part IX

Department of the Interior

Bureau of Indian Affairs

Notice of Availability and Public Hearing Dates for a Draft Environmental Impact Statement Regarding Proposed Leases of the Fort Mojave Indian Reservation in Nevada, California, and Arizona

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement (EIS); Fort Mojave Indian Reservation, Clark Co., NV, San Bernardino Co., CA, and Mohave Co., AZ

October 15, 1991.

AGENCY: Bureau of Indian Affairs (BIA), Interior.

ACTION: Notice of availability and public hearing dates.

SUMMARY: This notice advises the public that a Draft Environmental Impact Statement (DEIS) for a proposed lease of approximately 1,328 acres of the Fort Mojave Indian Reservation for mixed residential, commercial and recreational development projects in Clark County, Nevada, San Bernardino County, California, and Mohave County, Arizona, is available for public review. This notice is furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR part 1503) to obtain comments from government agencies and the public on the DEIS.

DATES: Written comments should be received on or before December 13, 1991. The public hearings to solicit comments from the public on the DEIS will be held November 12, 1991, 7 p.m. at the Fort Mojave Indian Tribal Chambers, 500 Merriman, Needles, California; November 13, 1991, 7 p.m. at the Mojave High School Cafeteria, 1414 Handcock Road, Riveria, (Bullhead City) Arizona and November 14, 1991, 6:30 p.m. at the Clark County Library, 833 Las Vegas Boulevard, North, Las Vegas, Nevada. Comments and participation at the public hearings are solicited and should be directed to the BIA at the address provided below or to Kiva Environmental and Planning Consultants, Attention: Ms. Karen E. Watkins, 12211 Paradise Village Parkway South, #241, Phoenix, Arizona 85032. Telephone (602) 494–9719.

ADDRESSES: Comments should be addressed to: Mr. Wilson Barber Jr., Area Director, Bureau of Indian Affairs, Phoenix Area Office, P.O. Box 10, Phoenix, Arizona 85001.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Heuslein, Area Environmental Protection Specialist, Bureau of Indian Affairs, Phoenix Area Office, P.O. Box 10, Phoenix, Arizona. Telephone (602) 379–6750 or FTS 261–6750.

Individuals wishing copies of this DEIS for review should immediately contact the above individual or Kiva Environmental and Planning Consultants, at the telephone listed above. Copies of the DEIS have been sent to all agencies and individuals who participated in the scoping process and to all others who have already requested copies of the document.

SUPPLEMENTARY INFORMATION: The Bureau of Indian Affairs, Department of the Interior, in cooperation with the Fort Mojave Indian Tribe, the U.S. Army Corps of Engineers and the U.S. Coast Guard have prepared a DEIS on the proposal to lease approximately 1,328 acres of the Fort Mojave Indian Reservation in Clark County, Nevada, San Bernardino County, California and Mohave County, Arizona. The Fort Mojave Indian Tribe has developed a master plan for a planned community on their reservation lands in Nevada and a portion in California. The DEIS describes the proposed actions, affected environment and evaluates the anticipated impacts of two proposed lease sites with each area to be leased to the same developer.

The lessee, James F. Temple, proposes to lease (Mojave Valley Resort—Site (1)) Approximately 528 acres of Indian trust land in Clark County, Nevada, and San Bernardino County, California, for a period of 65 years with a 20-year renewal option under the terms and conditions of a lease agreement. The proposed action is the development of a portion of the Fort Mojave Tribe's master planned community which would include five 1000-room hotels/ casinos, 460,000 square feet of commercial space, 650 condominiums, and 18-hole golf course with associated facilities, public use areas, open space and wetlands.

The lessee also proposes to lease (Mojave Valley Resort—Site (2)) Approximately 800 acres of Indian trust land in Mohave County, Arizona, for a period of 75 years with a 20-year renewal option under the terms and conditions of a lease agreement. The proposed action for this lease site would be the construction of a residential development area across the Colorado River from Mojave Valley Resort—Site 1. The development would include 110,000 square feet of commercial space, 2,240 condominiums, 2,880 apartments, 500 mobile home spaces, 750 recreational vehicle spaces, public use areas and open space.

Both actions are designed to provide additional lease income for the Fort Mojave Indian Tribe and would also provide employment opportunities for Tribal members. The current goals of the Fort Mojave Tribal Council include enhancement of economic development on the reservation, an increase in Tribal revenues, and employment and training opportunities.

The principal alternatives for each proposed lease site under consideration (Site 1 and 2) have been analyzed and evaluated in the draft document. The alternatives for the Mojave Valley Resort (Site 1—Nevada/California) the 528 acre lease site are based on the following: (1) A planned destination resort with small residential community. This alternative would reduce the proposal to three 1500-room hotels/ casinos instead of five 1000-room hotels/casinos. The commercial area, public use and roadway acreage would be reduced by approximately 50 percent. The acreage of the condominiums would be about the same as the proposed action, however, the density would be lower. This alternative would also include 25 acres of single family housing. The golf course would be reduced by 16 acres but located in the same area as the proposed action. (2) Another alternative proposed for the Mojave Valley Resort—Site 1 would be for the community acreage to be oriented towards seasonal visitors. There would be three 1000-room hotels/ casinos, and the proposed resort would be reduced to approximately 300 acres with the remainder of acres of the leasehold left as open space. The residential acreage would be reduced by 20 percent, the commercial land use would be eliminated, public use areas would be reduced 50 percent, while the golf course would be reduced to nine holes.

The alternatives for the Mojave Valley Resort (Site B—Arizona) 800 acre lease site include the following: (1) Reducing the number of acres of multi-family housing (condominiums and apartments) and adding over 300 acres of single-family housing. This alternative would increase the population to 1,000 more residents than the proposed action. This alternative provides the same amount of mobile home spaces, RV spaces, commercial and public use areas, open space and golf courses as the proposed action alternative. (2) Another alternative would involve reducing residential dwelling units by 5,252 (over 50% reduction), which reduces the number of acres of condominiums and apartments, and removes the mobile home park and RV park. The overall total number of dwelling units would be approximately 40 percent less while the total acreage proposed to be developed would be 401 acres with 399 acres as open space. This alternative would create a less dense community and population. The No Action alternative will also be discussed for both lease sites (Site 1 and 2) in the DEIS.

Other government agencies and members of the public have contributed to the planning and evaluation of the proposals and to the preparation of this DEIS. The scoping process for the Mojave Valley Resort Environmental Impact Statement (EIS) has involved several scoping phases. The first phase involved the publication of a Notice of Intent (NOI) in the February 5, 1990, **Federal Register** for the Mojave Valley Resort's proposed lease sites on the Fort Mojave Indian Reservation. Agency scoping meetings were held on February 13, 14, and 15, 1990, in Laughlin, Nevada; Bullhead City, Arizona; and Las Vegas, Nevada, respectively, in order to obtain input from Federal, State, local and tribal agencies and the interested public.

The NOI published in the February 5, 1990, **Federal Register**, also discussed another lease proposal on the Fort Mojave Indian Reservation that was to be evaluated in this DEIS. The Mojave Highlands 750 acre lease proposal in Clark County, Nevada, will now be covered in another DEIS to be published in the near future. The BIA made a decision in January 1991 to separate the Mojave Valley Resort lease site proposals from the Mojave Highlands lease site proposal.

Agencies and individuals are urged to provide comments on this DEIS as soon as possible. All comments received by the dates given above will be considered in preparation of the final EIS for these proposed actions.

This notice is published pursuant to § 1503.1 of the Council of Environmental Quality Regulations (40 CFR, parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 437 *et seq.*) Department of the Interior Manual (516 DM 1–6) and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Patrick A. Hayes,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 91–25343 Filed 10–21–91; 8:45 am]

BILLING CODE 4310–02–M

Federal Register

Tuesday
October 22, 1991

Part X

Department of Labor

Employment and Training Administration
20 CFR Part 655
Wage and Hour Division
29 CFR Part 507

Labor Conditions Applications and Requirements for Employers Using Aliens on H-1B Visas in Specialty Occupations; Interim Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205-AA89

Wage and Hour Division

29 CFR Part 507

RIN 1215-AA

Labor Condition Applications and Requirements for Employers Using Aliens on H-1B Visas in Specialty Occupations

AGENCIES: Employment and Training Administration, Labor and Wage and Hour Division, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: The Employment and Training Administration (ETA) and the Employment Standards Administration (ESA) of the Department of Labor (DOL or Department) are promulgating regulations governing the filing and enforcement of labor condition applications filed by employers seeking to use aliens in specialty occupations on H-1B visas. Under the Immigration and Nationality Act (INA), as amended by the Immigration Act of 1990 (Act), an employer seeking to employ an alien in a specialty occupation on an H-1B visa is required to file a labor condition application with, and receive the approval of, DOL before the Immigration and Naturalization Service (INS) may approve an H-1B visa petition. The labor condition application process will be administered by ETA; complaints and investigations regarding labor condition applications will be the responsibility of ESA.

DATES: *Effective Date:* October 1, 1991.

Comments: Written comments on the interim final rule are invited from interested parties. Comments must be received on or before December 23, 1991.

ADDRESSES: Submit comments to: Roberts T. Jones, Assistant Secretary, Employment and Training Administration, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Immigration Task Force, room N-4470.

FOR FURTHER INFORMATION CONTACT: On 20 CFR part 655, subpart H, and 29 CFR part 507, subpart H, contact David O. Williams, Chair, Immigration Task Force, Employment and Training Administration, Department of Labor, room N-4470, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 535-0174 (this is not a toll-free number).

On 20 CFR part 655, subpart I, and 29 CFR part 507, subpart I, contact Solomon Sugarman, Wage and Hour Division, Employment Standards Administration, Department of Labor, room S-3502, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 523-7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements contained in the interim final rule have been submitted to the Office of Management and Budget for clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control No. 1205-0310.

The Employment and Training Administration estimates that up to 50,000 employers per year will submit labor condition applications. The public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing information/data sources, gathering and maintaining the information/data needed, and preparing the application.

Written comments on the collection of information requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment and Training Administration, Washington, DC 20503.

II. Background

On November 29, 1990, the Immigration Act of 1990 (Act), Public Law 101-649, 104 Stat. 4978, was enacted into law. The law amends the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) (INA) and assigns responsibility to the Department of Labor for the implementation of several provisions of the Act relating to the entry of certain categories of employment-based immigrants, and to the temporary employment of certain categories of nonimmigrants. One of the major provisions of the Act the Department of Labor (DOL or Department) is charged with implementing governs the entry of H-1B aliens in specialty occupations to work temporarily in the United States (U.S.). 8 U.S.C. 1101(a)(15)(H)(i)(b); 8 U.S.C. 1182(n); and 8 U.S.C. 1184(c).

The Act has redefined and narrowed the occupational scope of the current H-1B visa category. Aliens of distinguished merit and ability who had been previously admitted under the H-1B visa category may now be eligible for entry under one of two new visa classifications (O and P) which have been established for aliens with extraordinary ability, persons accompanying aliens, and athletes and entertainers. 8 U.S.C. 1101(a)(15)(O) and 1101(a)(15)(P); see also 8 U.S.C. 1184(g)(1)(C). DOL has no operational responsibilities under the O and P visa provisions of the Act. Under the new provisions of the Act, the H-1B visa category is designated for aliens who are coming temporarily to the U.S. to perform services in a "specialty occupation," as defined in section 214(i)(1) of the INA. 8 U.S.C. 1184(i)(1). The Immigration and Naturalization Service (INS) makes determinations on whether a job opportunity is in a specialty occupation.

The new H-1B category of specialty occupations consists of those occupations which require the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States. In addition, the alien must possess full state licensure to practice in the occupation (if required), completion of the required degree, or experience in the specialty equivalent to the degree and recognition of expertise in the specialty. 8 U.S.C. 1184(i)(2). INS makes determinations on an alien's qualifications for a job opportunity or specialty occupation.

The INA now establishes a cap of 65,000 on the number of aliens who may be issued H-1B visas annually, and provides a process for protecting the wages and working conditions of similarly employed workers in the area of employment from being adversely affected by the employment of H-1B temporary workers. 8 U.S.C. 1184(g)(1)(A).

The process of protecting U.S. workers under the H-1B program begins with a requirement that employers file a labor condition application on Form ETA 9035 with the Department. 8 U.S.C. 1182(n). In this application the employer is required to attest that: (1) It will pay the alien(s) and other individuals employed in the occupational classification at the place of employment prevailing wages or actual wages whichever are greater; (2) it will provide working conditions that will not adversely affect the working conditions of U.S. workers similarly employed; (3) there is no strike or lockout in the course

of a labor dispute in the occupational classification at the place of employment; (4) it has publicly notified the bargaining representative of its employees in the occupational classification at the place of employment of its intent to employ an H–1B alien worker(s), or, if there is no bargaining representative, that it has posted such notice at the place of employment; and (5) the employer must provide the information required in the application about the number of aliens sought, occupational classification, job duties, wage rate and conditions under which the aliens will be employed, date of need, and period of employment.

Finally, an important part of the process of protecting U.S. workers consists of a complaint and enforcement provision. DOL will accept complaints from any aggrieved party about an employer's failure to meet a specified condition or for misrepresentation of a material fact in the application. If DOL determines that a reasonable basis for the complaint exists, DOL will investigate, provide the employer an opportunity for a hearing, and may assess penalties depending upon the outcome of the hearing. 8 U.S.C. 1182(n)(2).

III. The Process of Developing Interim Final Regulations

In developing the interim final regulations, the Department considered a number of issues pertaining to the filing of labor condition applications by employers seeking to employ H–1B workers. These issues included: (1) Which employers may file a labor condition application for H–1B worker(s); (2) whether a labor condition application must be filed before or after an H–1B visa is issued; (3) whether DOL should determine that an H–1B occupation is a specialty occupation, including the extent to which the Department will review a labor condition application; and (4) whether documentation should be submitted with the labor condition application and/or maintained at the place of employment.

The Department published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on March 20, 1991, which invited comments from all interested parties on these issues and others of concern to the public. 56 FR 11705. Subsequently, the Department published a Proposed Rule in the **Federal Register** on August 5, 1991, which also invited comments from all interested parties. 56 FR 37175. Comments and recommendations were received from a variety of persons and organizations with respect to the Department's approach to the development and implementation of these regulations. The Department has carefully considered the views of these commenters in developing the interim final regulations. Comments to the ANPRM are discussed in this section; comments to the Proposed Rule and changes made pursuant to those comments are discussed in section IV of the preamble, "Analysis of Comments to Proposed Rule."

A. Labor Condition Application Process and Requirements

The Department believes that Congress, in enacting the Act, intended to provide greater protection than under prior law for U.S. and foreign workers without interfering with an employer's ability to obtain the H–1B workers it needs on a timely basis. Accordingly, the Department is providing that a labor condition application be accepted if it is complete and that DOL review be limited to whether the application is complete, and whether the Wage and Hour Division (Administrator) has previously disqualified the employer from employing H–1B workers, thereby minimizing the time it takes to obtain approval of H–1B workers. However, in implementing the protection for workers that the Act intends, the procedures and documentation requirements are sufficiently specific to enable investigations of complaints against employers and enforcement of sanctions where necessary. Under the Act, protection of U.S. workers is provided through the complaint process. The interim final regulations set forth a process which: (1) Requires labor condition applications that are specific with respect to employer statements and promises; (2) limits DOL's review of a labor condition application to a simple check to assure that it is completed and signed, and to determine whether the Wage and Hour Division (Administrator) has disqualified the employer from employing H–1B workers; (3) describes the information that employers must retain to document the validity of their statements; and (4) establishes a system for the receipt of complaints, and their investigation and disposition, including the imposition of penalties where warranted. The interim final rule assigns to the Employment and Training Administration (ETA) DOL's role in accepting and processing applications; and to the Wage and Hour Division of the Employment Standards Administration (ESA) DOL's role in investigating complaints and assessing penalties.

1. Who May File a Labor Condition Application?

In developing the interim final regulations, the Department considered a number of issues relating to the eligibility of an employer to file a labor condition application, including: Whether an H–1B employer must have a physical location in the U.S. or otherwise be able to prove it is doing business in the U.S. at the time a labor condition application is filed; and whether the alien must be paid in U.S. currency. The Department received comments on these and several related issues. Several commenters to the ANPRM indicated that current practice did not require a U.S. employer, or even the presence of an employer in the U.S., and that payment to the H–1B workers was often not made in U.S. currency. One commenter stated that H–1B workers were not always paid while in the U.S. Instead, their salaries were credited to accounts in their home countries, and, while in the U.S., the workers were provided living expenses only and those expenses were paid in U.S. dollars.

The Department believes that, in order to implement the complaint and enforcement provisions of the Act, H–1B employers must maintain a legal presence in the United States. In the interim final regulations, the Department interprets this to mean that an H–1B employer must have an Internal Revenue Service (IRS) employer identification number and make a filed labor condition application and supporting documentation available for public examination at the employer's principal place of business in the U.S. or at the place of employment. In addition, the interim final regulations do not require the payment to the H–1B employee in U.S. currency.

Consideration was also given to whether a job contractor should be treated as an employer for H–1B purposes. The term job contractor refers to an employer whose employees perform work at job sites of other employers but who are paid by the job contractor and are its employees. In the interim final regulations, job contractors are treated like any other employer and are bound by the regulations applicable to all H–1B employers.

The Department notes that the Act requires the payment of wages which are at least equal to the actual wage level for the occupational classification at the place of employment, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater. Use

of a job contractor will not permit circumvention of this requirement; the interim final regulations require that an H–1B employee receive wages which are at least equal to the actual wage at the worksite or the local area prevailing wage for the occupation, whichever is greater.

2. Pre- vs. Post-Entry Approval

The Act requires the Department to determine and certify to the Attorney General that before the alien can be granted H–1B status, the employer has filed with, and had approved by DOL, a labor condition application. On the other hand, H.R. Conf. Rep. No. 101–955, p. 122, reprinted in 1990 U.S. Code Cong. & Admin. News 6787 (Conference Report) suggests that Congressional intent is that such status be granted on a "post-entry attestation" basis. A number of commenters to the ANPRM asserted their belief that the Act intended for labor condition applications to be approved by DOL on a post-entry basis. These commenters claim that U.S. businesses have a need to hire workers in H–1B specialty occupations quickly, and given the number and variety of occupations involved, they fear backlogs will develop if DOL reviews and approves each application on a pre-entry basis.

While the Department recognizes these concerns, the Department is required to follow the clear, unambiguous language of the Act. Therefore, the interim final regulations require that the employer must file a labor condition application and receive approval from DOL before an H–1B petition can be submitted to INS. Because of the legitimate concerns expressed, the Department has attempted to design a streamlined application procedure.

3. Part-Time Employment

The Department is continuing the long-standing practice of approving part-time employment for temporary professional workers in the H–1B program. The great majority of commenters to the ANPRM opposed the imposition of any limitation on part-time employment. These commenters argued that there is no statutory basis for excluding part-time work under the H–1B program and suggested that the economy would be harmed if H–1B workers were no longer permitted to enter for part-time jobs. Commenters also indicated that it is not unusual for an alien to be needed on a one-time project basis where a 40-hour work week is not typical. A few commenters favored eliminating or limiting part-time employment because the new ceiling on the annual number of H–1B visas could be quickly exhausted by numerous H–1B aliens working only a few hours per week. The Department agrees with the views of the majority of commenters and the interim final regulations do not prohibit part-time employment. Complaints alleging that working conditions of U.S. workers have been adversely affected by the employment of H–1B workers, including part-time H–1B workers, by, for example, eliminating or otherwise curtailing permanent jobs and/or fringe benefits for U.S. workers, would be investigated by the Department.

4. Multiple Employers

Under the current practice, H–1B aliens may work for more than one employer. The Department believes that there is no statutory basis for changing this practice. In addition, there appear to be situations where highly specialized skills and knowledge are needed by more than one employer simultaneously. Therefore, the interim final regulations continue to permit H–1B workers to work for more than one employer, provided that each employer has filed a labor condition application.

5. Occupational Scope

Under the interim final regulations, an employer may file a single labor condition application for more than one alien in more than one occupational classification, as long as the application clearly names each occupational classification by Dictionary of Occupational Titles (DOT) Three-Digit Occupational Groups code and by the employer's own title for the job. A listing of the three-digit occupational groups for professional, technical, and managerial occupations is included at appendix 2 to this document (not to be codified in the CFR).

For each occupational classification the employer must indicate the number of aliens to be employed, the rate of pay, the starting and ending dates of the H–1B workers' employment, and the location of each intended place of employment.

It must be emphasized that the Department will not utilize the three-digit occupational groups code for prevailing wage purposes, but rather, for keeping track of and reporting what occupations are employed under the H–1B visa category. Employers are cautioned that, in fact, occupational classifications at the three-digit level are too broad to meet the requirements needed in order to determine a prevailing wage.

6. Labor Condition Application Validity Period

The period of authorized admission for an alien nonimmigrant on an H–1B visa normally may not exceed six years. The interim final regulations provide that the acceptance of a labor condition application be valid for a period of up to six years, depending upon the period of intended employment stated in the labor condition application. The interim final regulations place no specific time limit on when a labor condition application, once approved by DOL, must be used. However, since the Act requires the employer to specify the period of intended employment, there will be a practical limitation on the extent to which an approved labor condition application can be held without being used.

B. Labor Condition Statements

1. Prevailing Wage Determinations

The Act requires that the wages paid to H–1B workers and to other workers in the occupational classification at the place of employment be the higher of the actual wage rate paid to such workers or the prevailing wage for the occupational classification in the area of employment. The interim final rule does not preclude an employer, however, from paying H–1B aliens more than the higher of the actual wage or the prevailing wage, as long as all similarly employed workers are being paid the higher of the actual wage or the prevailing wage.

The ANPRM acknowledged the Congressional intent, as expressed in the Conference Report, that prevailing wage determinations shall be made in a like manner as regulations currently governing the permanent alien labor certification (immigrant worker) program. See 20 CFR 656.40; see also 8 U.S.C. 1182(a)(5)(A).

The current method of obtaining prevailing wage information in the permanent worker program varies from state to state. In a few states, employers may call the State Employment Security Agency (SESA) and obtain prevailing wage information over the telephone. In other states, especially larger states, a prevailing wage determination is not made until the employer has submitted a labor certification application to the SESA. Upon receipt of the application, the SESA will determine whether it has on file current prevailing wage information for the occupation. Where it does not, the SESA conducts a prevailing wage survey using the methods outlined at 20 CFR 656.40. The speed with which these surveys can be conducted depends on a number of

factors, such as the volume of requests and the resources available to the SESA, and the extent to which surveyed employers voluntarily divulge information regarding wages paid to their workers in the occupation. Where employers are reluctant to provide the needed information, the SESA will require more time to make a prevailing wage determination, since other employers who will provide the information must be sought.

The Department received many comments on this issue, most of which addressed matters of availability, accessibility and utility of prevailing wage data. Commenters urged that SESAs make prevailing wage determinations quickly or immediately, even within a few days. A number of commenters recommended that the SESAs not be the only source of prevailing wage information, and that employers have the option of using other prevailing wage information, such as that contained in various published wage surveys. Some commenters expressed concern that SESA prevailing wage determinations would not be relevant to the occupation or geographic locality and would not be sufficiently specific to the occupation and employer. Other commenters suggested that prevailing wage surveys be conducted only after a complaint is filed. Still others commented on the need to provide a method of dealing with employer wage ranges.

The interim final regulations incorporate the language of 20 CFR 656.40, as required by the Conference Report, and, in response to the many comments received on this issue, also permit the applicant to use an independent authoritative wage source, as defined in subpart H of the interim final rule, in lieu of a SESA prevailing wage determination. These independent authoritative wage surveys are now used by state and federal staff in the permanent labor certification program and the Department believes their continued use in the H–1B program will simplify prevailing wage determinations for employers and the Department and will expedite the approval of labor condition applications. The interim final regulations, therefore, provide the employer with the option of either obtaining a prevailing wage determination from the SESA or using an independent authoritative source. If the employer obtains a prevailing wage determination from the SESA, the Department of Labor will accept that prevailing wage determination as correct and will not question its validity where the employer has maintained a copy of the SESA prevailing wage determination. A complaint alleging the inaccuracy of a SESA prevailing wage determination, in these cases, will not be investigated. If the employer obtains the prevailing wage from, and in good faith relies on, an independent authoritative source survey which meets all the criteria set forth in subpart H of the interim final regulations, the Department will not investigate such prevailing wage unless the Department receives significant evidence that shows a prevailing wage which varies substantially from the prevailing wage attested to. Therefore, where all criteria for independent authoritative source surveys are met, and where the survey has been applied correctly to the occupation and to the geographic area, the Department will not investigate a complaint which merely alleges that the attested prevailing wage is incorrect, unless the Department has significant evidence regarding the prevailing wage for that occupation in the area which shows that the prevailing wage varies substantially from that attested to. Where the employer arranges for the conduct of a prevailing wage survey, absent fraud or misrepresentation, the procedure must comply with all the criteria regarding the independent authoritative source, and the survey must apply sound survey methodology (20 CFR 656.40 and TAG No. 656) to current wage data.

In either case, the employer shall develop and retain documentation regarding how it determined the prevailing wage, and shall have the burden of proving the validity of the prevailing wage obtained from a non-SESA source in the event a complaint is filed. The interim final regulations also require that documentation to support an employer's prevailing wage rate be updated every 24 months from the date the application is approved, and that the workers receive the greater of the actual or the updated prevailing wage for the occupation for the entire period of intended employment. Employers may challenge a SESA prevailing wage determination through the Employment Service complaint system. See 20 CFR part 658, subpart E.

2. Prevailing Working Conditions

The Act requires employers to state that the employment of H–1B workers will not adversely affect the working conditions of U.S. workers similarly employed. The ANPRM stated the Department's interpretation that the Act intended that prevailing working condition determinations be made in the same manner as prevailing wage determinations, i.e., according to the current regulations for the permanent alien labor certification (immigrant worker) program. See 20 CFR part 656. Most of the few commenters to the ANPRM that addressed this issue appear satisfied with the current regulations for the permanent program. In the event of a complaint under the H–1B program, the employer must provide credible proof of prevailing working conditions for the occupations of concern. Such proof may include surveys conducted by employers, published independent studies or articles which discuss the conditions in the industry and locale, and other relevant information. The interim final regulations require that prevailing working conditions determinations be made on a post-complaint basis as is currently done in the permanent program. See 20 CFR 656.24(b)(3).

3. Supporting Documentation

The Department considered whether employers should be required to submit supporting documentation with the labor condition application or whether such documentation should be maintained by the employer at the place of employment. Several commenters to the ANPRM indicated that there is no statutory requirement to submit documentation to DOL or to maintain it at the place of employment. The Act does require that a copy of each application and accompanying documentation be available for public examination at the employer's principal place of business or place of employment.

The interim final regulations do not require that supporting documentation be submitted to DOL with the labor condition application. Instead, the employer is required to develop documentation to support each labor condition application element, except the "no strike or lockout" element, and maintain it at the place of employment or the employer's principal place of business in the U.S. The application and the supporting documentation regarding all elements except the "no strike or lockout" element of the application and payment of wages (i.e., payroll records) must be maintained by the employer for a period of one year beyond the end of the period of employment specified on the labor condition application or one year from the date the labor condition application was withdrawn, except that, in the event a timely complaint is filed, the documentation must be retained until the complaint is resolved through the enforcement process set out in the regulations. Payroll records, documenting the payment of the

required wages, must be retained for three years from the date(s) of the creation of the record(s), except that in the event a timely complaint is filed, all payroll records must be retained until the complaint is resolved through the enforcement process.

C. DOL Review of Labor Condition Applications

1. Level of Review

The Department considered a number of approaches to the level of DOL review of a labor condition application ranging from full review and approval of each labor condition element to a simple screening of the application for completeness. Many commenters to the ANPRM made recommendations concerning the level of review of a labor condition application. A number of commenters recommended that DOL not review a labor condition application unless a complaint was filed. Other commenters suggested that DOL simply file the labor condition application after insuring that the required information has been provided on the form.

The Department believes that Congress intended that DOL use a simplified, streamlined process for reviewing H–1B labor condition applications and will employ a simplified review. The Department will rely upon a complaint-driven enforcement process which involves: Attestations made by the employer; public examination of the labor condition application; and the ability of aggrieved persons to file complaints, which may be investigated and which may result in penalties against the employer. The Department's interim final regulations reflect this approach.

2. Specialty Occupation

The INA defines a "specialty occupation" as one which requires the theoretical and practical application of a body of highly specialized knowledge, and which requires the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent). 8 U.S.C. 1184(i)(1). In addition, the INA requires the prospective H–1B alien to possess the following qualifications: Full state licensure to practice in the occupation, if required; and either (i) completion of a bachelor's or higher degree in the specific specialty (or its equivalent), or (ii) experience in the specialty equivalent to the completion of such a degree and expertise in the specialty through progressively responsible positions relating to the specialty. 8 U.S.C. 1184(i)(2).

It has been the responsibility of INS to determine whether an alien and the occupation met the requirements for an H–1B visa. The interim final regulations reflect a continuation of this approach. INS will continue to have, under the H–1B program, the responsibility for determining whether the occupation and alien meet the requirements for an H–1B visa, after receiving the employer's petition with the DOL-approved labor condition application attached. A determination by INS that the occupation or alien does not qualify for an H–1B visa is appealed only through relevant INS and Department of Justice procedures.

This approach is in keeping with the intent of the Act—that DOL review be simple and streamlined, and that worker safeguards be provided by a complaint-driven enforcement system.

3. Labor Availability Determination

The ANPRM asked whether commenters believed that Congress intended that employers attest to the unavailability of U.S. workers for the positions offered aliens who would enter the U.S. on H–1B visas. A large number of comments and recommendations were received on this issue. Most commenters stated they believed that such a requirement was not in the law and exceeded Congressional intent. These commenters argued that the attestation-like process, public notification, and complaint provisions were the mechanisms intended by the Act to protect U.S. workers. Other commenters asserted that the Act intends that an employer attest that it had been unable to recruit a qualified U.S. worker for the position(s) to be filled by the H–1B alien(s).

The Department is not requiring that employers attest to the unavailability of qualified U.S. workers for H–1B positions.

D. Confidentiality of Employer Information

Many commenters raised the issue of the confidentiality of employer-provided information. These commenters strongly recommended that the Department make every effort to protect confidential employer information provided to the Department as part of the labor condition application. While the Department recognizes these concerns, the Act requires that the employer make available for public examination a copy of the labor condition application and accompanying documentation within one working day after the date on which an application is filed with DOL. 8 U.S.C. 1182(n)(1)(D); see also 8 U.S.C. 1182(n)(1)(C). Although the Department does not require any documentation to be submitted to it along with the labor condition application, the interim final regulations require that certain documentation must be available for public examination at the place of employment. In addition, employers should note that if a complaint is filed, an investigation conducted, and a hearing held, any employer information submitted as evidence at the hearing will become a matter of public record; such information may well be more extensive than that which the employer must make available for public examination. See 8 U.S.C. 1182(n)(2).

E. Discouraging Frivolous Complaints

Many commenters urged the Department to take steps to discourage frivolous complaints. The Department notes that the Act itself addresses this concern by permitting only "any aggrieved person or organization (including bargaining representatives)" to file a complaint. 8 U.S.C. 1182(n)(2)(A). In addition, under the Department's interim final regulations an investigation will only be initiated after DOL determines that there is reasonable cause to believe a violation has occurred.

F. Complaint, Investigation and Hearing

Section 212(n)(2) of the Act requires that the Department establish a system to conduct investigations to determine whether an employer failed to meet a condition specified in the labor condition application or misrepresented a material fact on its application. 8 U.S.C. 1182(n)(2). These regulations provide that the Wage and Hour Administrator may conduct investigations of potential violations of the law only pursuant to a complaint. The Department has determined, based on the legislative history, that this carries out Congressional intent that the enforcement of the statute should be exclusively complaint driven. Any aggrieved person or organization (including bargaining unit representatives) may file a complaint, but the interim final regulations reflect the Act's requirement that the complaint be filed no later than 12 months after the alleged violation(s). The investigative process is to be completed and a determination issued within 30 days from the date that the complaint is accepted for filing, after screening for reasonable cause; the 30-day investigation period may be suspended in the event that the Administrator finds it necessary to seek a determination from ETA on a controlling matter such as the prevailing wage.

The Department's interim final regulations reflect the employer's obligation to establish its compliance with, and the truthfulness of, the statements and information attested to on the labor condition application. The regulations also require that the employer cooperate in the investigation and take no retaliatory action against persons who file complaints, assist in the investigation, or participate in administrative proceedings. 8 U.S.C. 1182(n)(2) (A) and (B).

G. Administrative Law Judge Hearing and Discretionary Review by the Secretary

Section 212(n)(2)(B) requires that the Secretary provide interested parties an opportunity for a hearing within 60 days of the date of the investigative determination, and issue findings within 60 days of the date of the hearing.

Because of this compressed time frame, the interim final regulations require that a request for hearing be filed directly with the Chief Administrative Law Judge no later than 15 days from the date of the Administrator's determination. Further, because of the problems of proof to be anticipated in an administrative hearing on factual issues of prevailing wages and working conditions which may be virtually impossible to address except through hearsay reports of surveys, or for which crucial witnesses and other evidence may be unavailable except through hearsay since, for example, the witnesses are located outside the U.S., the interim final regulations specify that the Department's rules of evidence shall not apply.

An opportunity for discretionary review by the Secretary is afforded by the interim final regulations, with short deadlines in accordance with the statutory intent for expedited dispositions. Any interested party may request such review, and the Secretary shall determine what matters, if any, will be reviewed.

H. Penalties

Failure to meet a condition of the application regarding wages, working conditions, and strikes or lockouts, or substantial failure to meet a condition of the application regarding notification of bargaining representatives or employees, or misrepresentation of a material fact in the application may result in the imposition of administrative remedies: (1) Civil money penalties in an amount not to exceed $1,000 per violation; (2) employers being barred from filing applications or attestations with the Department to employ aliens on either a permanent or temporary basis for at least one year; and (3) employers being ordered to provide for payment of back wages. 8 U.S.C. 1182(n)(2)(C) and (D).

IV. Analysis of Comments to Proposed Rule

A. Introduction

On August 5, 1991, a proposed rule was published in the **Federal Register** to implement the Department's responsibilities relating to labor condition applications with a comment period ending September 4, 1991.

Comments were received from 62 entities. Twenty-three of those comments were submitted by educational institutions and an additional nineteen came from the business sector. The remaining comments were submitted by various other entities.

Comments from the educational sector were uniform in their concerns. While most educational institutions believed that the proposed process is highly streamlined, they were concerned that because of the backlog in some regions, labor condition applications would not be processed in a timely fashion. There was also serious concern that the posting of a labor condition application, which contains wage rates, amounts to a breach of confidentiality.

Comments from the business sector primarily addressed the same two issues as those of educational institutions. In addition, they were concerned about the requirement that an employer obtain prevailing wage information every 24 months and adjust the wage rate upwards if the prevailing wage had increased.

All of these comments have been reviewed and considered in preparing the interim final rule. Two major changes to the proposed rule, discussed below, have been made: First, the Department has amended the provision that an employer who files an application but who does not employ any H–1B aliens must comply with the terms of the application and may still be investigated and subject to sanctions based on the application; secondly, the Department has deleted the requirement that the employer develop and maintain documentation supporting its statement that there is no strike or lockout.

Additionally, a number of minor technical corrections have been incorporated as a result of this review. Such corrections include: § ____.700, procedures regarding alien appearance in H–1B petition process have been corrected; § ____.705(a)(1), the Department will compile and maintain a list of labor condition applications and will make such list available for public examination in Washington, DC., § ____.705(c)(2), the employer must make a filed labor condition application and supporting documentation available for public examination at the employer's principal place of business in the U.S. or at the place of employment within one working day after the date on which the labor condition application is filed with ETA; § ____.730(c)(1)(iii), the employer may state the rates of pay not only on a weekly, biweekly or monthly basis, but also on an annual basis; § ____.730(h), an employer who provides notice of the filing of a labor condition application to a bargaining representative must provide such notice to the bargaining representative of the employees in the occupational classification in which the H–1B workers will be employed; § ____.730(h)(1)(ii), where there is no bargaining representative, the employer must provide notice of the labor condition application to its employees no later than on or before the date the labor condition application is filed.

While the comments received during the comment period on the proposed rule will be further considered, DOL is publishing these regulations on an interim final basis, with a comment period to end 60 days from the time of publication. A final rule will be published at a later date. The preamble to that final rule will discuss fully the comments received on the proposed rule and the interim final rule, and, where appropriate, the interim final rule will be amended.

B. Changes in Interim Final Rule

1. Compliance With Regulations When no H–1Bs Are Employed

Several commenters objected to the provision in § ____.750(b)(4) that an employer who files an application but who does not at any time actually employ H–1B aliens may still be investigated and subject to sanctions based on the application. As proposed, this provision requires that an employer abide by all labor condition application terms, including the prevailing wage requirements and 24-month updates, once a labor condition application is filed, regardless of whether the employer petitions for, or ever employs, H–1B aliens.

The Department agrees with the comments received as they pertain to the requirement for compliance with the "prevailing wage" and "prevailing working conditions" labor condition statements in such circumstances, and revises the provision in the interim final regulations. The Department's rule now

requires, instead, that only where an employer has actually employed any H–1B aliens will that employer be subject to investigation and sanctions, including back pay, based on compliance with the "prevailing wage" and "prevailing working conditions" labor condition statements made in the application. Thus, employer compliance with the "prevailing wage" and "prevailing working conditions" elements of the labor condition application is required from the date an H–1b alien is employed through the validity period of the labor condition application irrespective of whether any H–1B aliens are currently employed, unless the labor condition application is withdrawn.

An employer may still be subject to investigation and sanctions based on the "no strike or lockout" and "notice" labor condition statements, however, even if it does not employ H–1B aliens. The Department believes the distinction is justified because at the time of filing the application, the employer must already be in compliance with the "no strike or lockout" and "notice" labor conditions statements, and the "prevailing wage" and "prevailing working conditions" elements are limited in the statute to the period of authorized employment.

2. Deletion of "No Strike or Lockout" Documentation Requirement

Several commenters expressed concern over the difficulty in complying with the negative requirement in § ____.730(g)(2) that the employer develop and maintain documentation supporting its statement that there is no strike or lockout. The Department agrees with this position and is therefore withdrawing such requirement from the interim final rule.

C. Changes Considered But Not Made

1. Review and Approval of a Labor Condition Application

The majority of the comments received addressed ETA's review of the labor condition application. Most of these commenters stated that ETA should not review an application before accepting it, but rather, that an application should be deemed approved upon receipt. Alternatively, most of those commenters proposed that, in order to ensure that employers have timely access to employees and certainty in their hiring decisions, an application be reviewed within a certain period of time, after which the application would be deemed approved if ETA took no action.

Although the Department is sensitive to these employer concerns, the Department does not believe that approving an application upon receipt is legally supportable. The Act states, at section 205, that the "Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with, and had approved by, the Secretary an application * * *" The Department has interpreted the above language to mean that DOL must review and approve the application in order to so certify to the Attorney General before a petition can be filed with the INS. As shown in the proposed rule, ETA's review will be minimal.

In an effort to be responsive to these concerns, however, the Department intends to make a determination on whether to accept an application immediately upon receipt, and in no case later than 30 days of the time of receipt. A thirty-day maximum processing target will further expedite an already highly streamlined process, and provide both the educational and business communities with necessary certainty in their hiring decisions. The Department believes, nonetheless, that until it develops operational experience in the processing of this new type of streamlined application, it cannot and should not regulate its processing time. The projected thirty-day processing period, therefore, is only a target.

2. Validity Period

A number of commenters believed that the requirement under § ____.730(e)(1)(iii) that an employer obtain prevailing wage information every 24 months and adjust the wage rate upwards if the prevailing wage has increased exceeds the statute. They point to the language in the section 205 of the Act that states that the employer is offering wages that are at least "* * * the prevailing wage level * * * determined as of the time of filing the application * * *"

The Department recognizes that this language could be construed to mean that the prevailing wage should be determined only once, at the time of filing the application. The Department seriously considered requiring that the employer determine the prevailing wage only at the time of filing the application, but concluded that in the case of an application with a six year validity period, such procedure would render the prevailing wage requirement meaningless.

The Department also considered, alternatively, requiring that the validity period for an application be shortened to one year or two years, for example, with an attendant prevailing wage determination every time the application was filed. The Department decided that such procedure would be unnecessarily burdensome and opted instead for what it considered a less burdensome and more sensible approach, i.e., one application for up to six years but with a prevailing wage determination every two years starting from the date the labor condition application is approved.

3. Public Inspection of Employer Wages

Several commenters objected to the requirement under § ____.760(a)(2) that the employer make available for public examination information about the pay rate to its employees in the occupational classification in which the H–1B alien is to be employed. Although actual payroll records showing rates of pay to individual employees are not required to be made available for public examination, these commenters believe that the § ____.760(a)(2) requirement poses a serious threat to the privacy of those individuals whose salary is posted in situations where there are few employees in the H–1B's occupational classification. Moreover, many employers expressed reluctance to provide competitors access to their wage scales.

While the Department is aware of such concerns, the language in the statute is unambiguous that "the employer shall make available for public examination * * * a copy of each such application (and accompanying documentation)." Furthermore, the Act requires that the application contain a "specification of the number of workers sought, the occupational classification in which the workers will be employed, and wage rate and conditions under which they will be employed" (emphasis added). The Department has interpreted the term "accompanying documentation" to mean the documentation necessary to support the statements in the labor condition application. Since the application must, by statute, state the wage rate which the employer is paying its workers, the documentation must support such statement.

In order to keep the process as streamlined as possible, the Department has decided not to require that the documentation accompany the labor condition application when it is filed. Such decision, however, should not be interpreted to mean, as one commenter suggested, that since no documentation is required to accompany the application, the employer need not have any documentation available for public examination.

V. Summary

The Department welcomes comments on any issues addressed in the interim

final regulations, and on any issues not addressed that commenters believe need to be addressed.

Regulatory Impact and Administrative Procedure

E.O. 12291

The rule does not have the financial or other impact to make it a major rule and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order 12291, 3 CFR, 1981 Comp., Page 127, 5 U.S.C. 601 note.

Regulatory Flexibility Act

The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule does not have a significant economic impact on a substantial number of small entities.

Nevertheless, interested parties are requested to submit, as part of their comments on this rule, information on the potential economic impact of the rule.

Immediate Effective Date

The interim final rule is effective on October 1, 1991. The statute provides that the H–1B program for nonimmigrant aliens in specialty occupations begins on that date. Absent immediate standards for this program, nonimmigrant aliens in specialty occupations and their U.S. co-workers would lack the protections necessary under this program; and employers would not be fully aware of their responsibilities. For those reasons, the Department of Labor has found good cause to exist to make the interim final rule effective on the statutory effective date of October 1, 1991. 5 U.S.C. 553(d)(3). Nevertheless, the Department invites interested members of the public to comment on the interim final rule, for the period set forth in the **DATES** section above.

Catalog of Federal Domestic Assistance Number: This program is not yet listed in the Catalog of Federal Domestic Assistance.

List of Subjects

20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Forest and forest products, Guam, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Specialty occupation, Wages.

29 CFR Part 507

Administrative practice and procedures, Aliens, Employment, Enforcement, Immigration, Labor, Penalties, Reporting and recordkeeping requirements, Specialty occupation, Wages.

Text of the Interim Final Joint Rule

The text of the interim final joint rule as adopted by ETA and the Wage-Hour Division, ESA, in this document appears below:

Subpart H—Labor Condition Applications and Requirements for Employers Using Aliens on H–1B Visas in Specialty Occupations

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Subpart H—Labor Condition Applications and Requirements for Employers Using Aliens on H–1B Visas in Specialty Occupations

§ ____.700 Purpose, procedure and applicability of subparts H and I.

(a) *Purpose.* The Immigration and Nationality Act (Act), with respect to nonimmigrant workers entering the United States (U.S.) on H–1B visas:

(1) Establishes an annual ceiling of 65,000 (exclusive of spouses and children) on the number of aliens who may be issued H–1B visas;

(2) Defines the scope of eligible occupations for which nonimmigrants may be issued H–1B visas and specifies the qualifications that are required for entry as an H–1B worker;

(3) Requires an employer seeking to employ H–1B workers to file a labor condition application with and have it approved by the Department of Labor (DOL) before an alien may be provided H–1B status by the Immigration and Naturalization Service (INS); and

(4) Establishes a system for the receipt and investigation of complaints, as well as for the imposition of fines and penalties for misrepresentation or for failure to fulfill a condition of the labor condition application. 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), 1184(g)(1)(A), and 1184(i).

(b) *Procedure for obtaining an H–1B visa.* Before a nonimmigrant alien may work in a "specialty occupation" in the United States under an H–1B visa, the alien must receive that H–1B visa from the Department of State (DOS). There are certain steps in the process which leads to the issuance of an H–1B visa. These steps shall be followed in sequence and are as follows:

(1) First, an employer shall submit to DOL, and obtain DOL approval of, a labor condition application. The requirements for obtaining an approved labor condition application are provided in this subpart. The labor condition application (Form ETA 9035) and instructions may be obtained from DOL Regional Offices listed in § ____.720 of this part.

(2) After obtaining DOL approval of a labor condition application, the employer may submit a petition (INS Form I–129), together with the approved labor condition application, to INS, requesting H–1B classification for the alien. The requirements concerning the submission of a petition to, and its processing by, INS are set forth in INS regulations. The INS petition (Form I–129) may be obtained from an INS district or area office.

(c) *Applicability.* Subparts H and I of this part apply to all employers seeking to employ aliens on H–1B visas in specialty occupations.

§ ____.705 Overview of responsibilities.

Three federal agencies are involved in the process which leads to the issuance of an H–1B visa, and the responsibilities which continue after the visa is issued. The employer also has continuing responsibilities under the process. This

section briefly describes the responsibilities of each of these entities.

(a) *Department of Labor responsibilities.* DOL administers the labor condition application process and enforcement provisions.

(1) The Employment and Training Administration (ETA), DOL, is responsible for receiving and making determinations on labor condition applications in accordance with subpart H of this part. ETA is also responsible for compiling and maintaining a list of labor condition applications and shall make such list available for public examination at the Department of Labor, 200 Constitution Avenue, NW., room N4456, Washington, DC 20210.

(2) The Employment Standards Administration (ESA), DOL, is responsible, in accordance with subpart I of this part, for investigating and resolving any complaints filed with DOL concerning labor condition applications or the employment of H–1B workers.

(b) *Immigration and Naturalization Service (INS) and Department of State (DOS) responsibilities.* The Immigration and Naturalization Service (INS) shall receive the employer's petition (INS Form I–129) with the DOL-approved labor condition application attached. INS is responsible for approving the alien's H–1B visa classification. In doing so, the INS determines whether the occupation named in the labor condition application is a specialty occupation and whether the qualifications of the alien meet the statutory requirements for H–1B visa classification. If the petition is approved, INS will notify the U.S. Consulate where the alien intends to apply for the visa unless the alien is in the U.S. and eligible to adjust status without leaving this country. See 8 U.S.C. 1184(i). The Department of State, through U.S. Embassies and Consulates, is responsible for issuing H–1B visas.

(c) *Employer's responsibilities.* Each employer seeking an H–1B employee(s) in a specialty occupation has several responsibilities.

(1) The employer shall submit a completed labor condition application on Form ETA 9035 and one copy to the regional office of ETA serving the area where the alien will be employed. If the labor condition application is approved by ETA, a copy will be returned to the employer.

(2) The employer shall make a filed labor condition application and supporting documentation available for public examination at the employer's principal place of business in the U.S. or at the place of employment within one working day after the date on which the labor condition application is filed with ETA.

(3) The employer then may submit a copy of the approved labor condition application to INS with a completed petition (INS Form I–129) requesting H–1B classification.

(4) The employer should not allow the alien to begin work, even though a labor condition application has been approved by DOL, until INS grants the alien authorization to work in the United States for that employer.

(5) The employer shall develop sufficient documentation to meet its burden of proof with respect to the validity of the statements made in its labor condition application and the accuracy of information provided in the event that such statement or information is challenged. The employer shall also maintain such documentation at its place of business in the U.S. and shall make such documentation available to DOL for inspection and copying upon request.

§ ____.710 Complaints.

Complaints concerning misrepresentation in the labor condition application or failure of the employer to meet a condition specified in the application shall be filed with the Administrator, Wage and Hour Division (Administrator), ESA, according to the procedures set forth in subpart I of this part. The Administrator shall then investigate if reasonable cause is found, and, where appropriate, after an opportunity for a hearing, assess sanctions and penalties.

§ ____.715 Definitions.

For the purposes of subparts H and I of this part:

Actual wage means the wage rate paid by the employer to all similarly situated employees in the occupation at the worksite at the time of employment.

Administrative Law Judge means an official appointed pursuant to 5 U.S.C. 3105.

Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, Department of Labor, and such authorized representatives as may be designated to perform any of the functions of the Administrator under subpart H or I of this part.

Area of intended employment means the area within normal commuting distance of the place (address) of employment where the H–1B alien is or will be employed. If the place of employment is within a Metropolitan Statistical Area (MSA), any place within the MSA is deemed to be within normal commuting distance of the place of employment. If there is no MSA then the area of intended employment is the area within normal commuting distance of the place of employment.

Attorney General means the chief official of the U.S. Department of Justice or the Attorney General's designee.

Authorized agent and *authorized representative* mean an official of the employer who has the legal authority to commit the employer to the statements in the labor condition application.

Certifying Officer and *Regional Certifying Officer* mean a Department of Labor official, or such official's designee, who makes determinations about whether or not to approve labor condition applications.

Chief Administrative Law Judge means the chief official of the Office of the Administrative Law Judges of the Department of Labor or the Chief Administrative Law Judge's designee.

Department and *DOL* mean the United States Department of Labor.

Division means the Wage and Hour Division of the Employment Standards Administration, DOL.

Employer means:

(1) A person, firm, corporation, contractor, or other association or organization in the United States which suffers or permits a person to work within the United States;

(2) Which has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise or otherwise control the work of any such employee; and

(3) Which has an Internal Revenue Service tax identification number.

Employment and Training Administration (ETA) means the agency within the Department which includes the United States Employment Service (USES).

Employment Standards Administration (ESA) means the agency within the Department which includes the Wage and Hour Division.

Immigration and Naturalization Service (INS) means the component of the Department of Justice which makes the determination under the Act on whether to grant visa petitions of employers seeking the admission of nonimmigrant aliens under H–1B visas for the purpose of employment.

INA means the Immigration and Nationality Act, as amended, 8 U.S.C. 1101 *et seq.*

Independent authoritative source means a professional, business, trade, educational or governmental association, organization, or other similar entity, not owned or controlled by the employer, which has a recognized expertise in an occupational field.

Independent authoritative source survey means a survey of wages conducted by an independent authoritative source and published in a book, newspaper, periodical, loose-leaf service, newsletter, or other similar medium, within the 24-month period immediately preceding the filing of the employer's attestation and each succeeding 24-month prevailing wage update. Such survey shall:

(1) Reflect the average wage paid to workers similarly employed in the area of intended employment;

(2) Be based upon recently collected data—e.g., within the 24-month period immediately preceding the date of publication of the survey; and

(3) Represent the latest published prevailing wage finding by the authoritative source for the occupation in the area of intended employment.

Lockout means a labor dispute involving a work stoppage, wherein an employer withholds work from its employees in order to gain a concession from them.

Occupation means the occupational or job classification in which the H–1B alien is to be employed.

Period of intended employment means the time period between the starting and ending dates inclusive of the H–1B alien's intended period of employment in the occupational classification at the place of employment as set forth in the labor condition application.

Place of employment means the worksite or physical location where the work is performed.

Required wage rate means the rate of pay which is the higher of:

(1) The actual establishment wage rate for the occupation in which the H–1B alien is to be employed; or

(2) The prevailing wage rate (adjusted every 24 months) for the occupation in which the H–1B alien is to be employed in the geographic area of intended employment. The prevailing wage rate must be no less than the minimum wage required by Federal, State, or local law.

Secretary means the Secretary of Labor or the Secretary's designee.

Specialty occupation means an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree (or its equivalent) in the specific specialty as a minimum for entry, into the occupation in the United States. 8 U.S.C. 1184(i). The alien in a specialty occupation shall possess the following qualifications:

(1) Full state licensure to practice in the occupation, if licensure is required for the occupation;

(2) completion of the required degree; or

(3) experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Determinations of specialty occupation and of alien qualifications are made by INS.

State means one of the 50 States, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

State employment security agency (SESA) means the State agency designated under section 4 of the Wagner-Peyser Act to cooperate with USES in the operation of the national system of public employment offices.

Strike means a labor dispute wherein employees engage in a concerted stoppage of work (including stoppage by reason of the expiration of a collective-bargaining agreement) or engage in any concerted slowdown or other concerted interruption of operation.

United States Employment Service (USES) means the agency of the Department of Labor, established under the Wagner-Peyser Act, which is charged with administering the national system of public employment offices.

Wage rate means the remuneration (exclusive of fringe benefits) to be paid in terms of amount per hour, day, month or year.

§ ____.720 Addresses of Department of Labor regional offices.

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont): One Congress Street 10th Floor, Boston, Massachusetts 02114–2021. Telephone: 617–565–4446.

Region II (New York, New Jersey, Puerto Rico, and the Virgin Islands): 201 Varick Street, room 755, New York, New York 10014. Telephone: 212–660–2185.

Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia): Post Office Box 8796, Philadelphia, Pennsylvania 19101. Telephone: 215 596–6363.

Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee): 1371 Peachtree Street, NE., Atlanta, Georgia 30309. Telephone: 404–347–3938.

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin): 230 South Dearborn Street, room 605, Chicago, Illinois 60604. Telephone: 312–353–1550.

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas): 525 Griffin Street, room 314, Dallas, Texas 75202. Telephone: 214–767–4989.

Region VII (Iowa, Kansas, Missouri, and Nebraska): 911 Walnut Street, Kansas City, Missouri 64106. Telephone: 816–426–3796.

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming): 1961 Stout Street, 16th Floor, Denver, Colorado 80294. Telephone: 303–844–4613.

Region IX (Arizona, California, Guam, Hawaii, and Nevada): 71 Stevenson Street, room 830, San Francisco, California 94119. Telephone: 415–744–6647.

Region X (Alaska, Idaho, Oregon, and Washington): 909 First Avenue, room 1145, Seattle, Washington 98174. Telephone: 206–553–5297.

§ ____.730 Labor condition application.

(a) *Who must submit labor condition applications?* An employer, or the employer's authorized representative or agent, which meets the definition of employer set forth in § ____.715 of this part and intends to employ an H–1B alien in a specialty occupation shall submit a labor condition application to DOL.

(b) *Where should a labor condition application be submitted?* A labor condition application shall be submitted, by U.S. mail, private carrier, or facsimile transmission, to the ETA regional office shown in § ____.720 of this part in whose geographic area of jurisdiction the H–1B employee will be employed. It is the employer's responsibility to ensure that a complete application is received by the appropriate regional office of ETA. Incomplete applications will not be approved. The regional office shall process all applications sequentially upon receipt regardless of the method used by the employer to submit the application. If the application is submitted by facsimile transmission, the application containing the original signature shall be maintained by the employer as set forth at § ____.760(a)(1) of this part.

(c) *What should be submitted? Form ETA 9035.* (1) *General.* One completed and dated original Form ETA 9035, or facsimile transmission thereof, containing the labor condition statements referenced in paragraphs (e) through (h) of this section, bearing the employer's original signature (or that of the employer's authorized agent or representative) (see paragraph (b) of this section and § ____.760(a)(1) of this part with respect to applications filed by facsimile transmission) and one copy of Form ETA 9035 shall be submitted to ETA. Copies of Form ETA 9035 are

available at the addresses listed in § ____.720 of this part; photocopies of the form also are permitted. Each application shall identify the occupational classification(s) for which a labor condition application is being submitted and shall state for each occupational classification:

(i) The occupation(s), by Dictionary of Occupational Titles (DOT) Three-Digit Occupational Groups code and by the employer's own title for the job;

(ii) The number of H–1B workers sought;

(iii) The gross wage rate(s) to be paid to each H–1B worker, expressed on a weekly, biweekly, monthly or annual basis;

(iv) The starting and ending dates of the H–1B workers' employment;

(v) The place(s) of intended employment.

(2) *Multiple positions, occupations, and/or places of employment.* The employer may file a labor condition application for a single occupation or for multiple occupations. An employer may file a single labor condition application for more than one occupational classification, and/or for more than one place of employment only if:

(i) Each occupation is a specialty occupation;

(ii) All places of employment covered by the application are located within the jurisdiction of a single ETA regional office, or, if the alien(s) is/are to be employed sequentially in various places of employment, the application is to be submitted to the regional office having jurisdiction over the initial place of employment; and

(iii) The information required in this paragraph (c) is provided for each occupational classification for each place of employment.

(3) *Full-time and part-time jobs.* The position(s) covered by the labor condition application may be full-time or part-time or a mix of both.

(d) *Content of the labor condition application.* An employer's labor condition application shall contain the labor condition statements referenced in paragraphs (e) through (h) of this section, which provide that no alien may be admitted or provided status as an H–1B nonimmigrant in an occupational classification unless the employer has filed with the Secretary an application stating that:

(1) The employer is offering and will offer during the period of authorized employment to aliens and to all other individuals employed in the occupational classification and in the area of intended employment the greater of the following:

(i) The actual wage level for the occupational classification at the place of employment; or

(ii) The prevailing wage level for the occupational classification in the area of intended employment;

(2) The employer will provide working conditions for such aliens that will not adversely affect the working conditions of workers similarly employed;

(3) There is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment;

(4) The employer, at the time of filing the labor condition application:

(i) Has provided notice of the filing of the labor condition application to the bargaining representative of the employer's employees in the occupational classification in the area of intended employment for which the aliens are sought; or

(ii) If there is no such bargaining representative, has posted notice of the filing of the labor condition application in conspicuous locations in the employer's establishment(s) in the area of intended employment, in the manner described in paragraph (h) of this section; and

(5) The employer has provided the information about the occupation required in paragraph (c) of this section.

(e) *The first labor condition statement: wages.* An employer seeking to employ H–1B aliens in a specialty occupation shall state on Form ETA 9035 that it will pay the H–1B aliens and other similarly situated worker(s) the required wage rate. For purposes of this paragraph (e), "similarly situated" shall mean an employee of the employer working in the same position under like conditions, such as the same shift.

(1) *Establishing the wage requirement.* The first labor condition application requirement shall be satisfied when the employer signs Form ETA 9035, attesting that, for the entire period of authorized employment, the required wage rate will be paid to the H–1B alien(s) and other similarly situated workers; that is, that the wage shall be the greater of:

(i) The actual wage rate paid to workers similarly employed at the place of employment; or

(ii) The prevailing wage level for the occupational classification in the area of intended employment determined as of the time of filing the application and every 24 months thereafter. The prevailing wage shall be determined as follows:

(A) If the job opportunity is in an occupation which is subject to a wage determination in the area under the Davis-Bacon Act, 40 U.S.C. 276a *et seq.* (see also 29 CFR part 1), or the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351 *et seq.* (see also 29 CFR part 4), the prevailing wage shall be at the rate required under such statutory determination;

(B) If the job opportunity is covered by a union contract which was negotiated at arms-length between a union and the employer, the wage rate set forth in the union contract shall be presumed for this purpose as not adversely affecting the wages of U.S. workers similarly employed, and shall be considered as the "prevailing wage" for purposes of an employer's prevailing wage statement on a labor condition application;

(C) If the job opportunity is in an occupation which is not covered by paragraph (e)(1)(ii)(A) or (B) of this section, the prevailing wage shall be the average rate of wages, that is, the rate of wages paid to workers similarly employed in the area of intended employment. Since it is not always feasible to determine such an average rate of wages with exact precision, the wage set forth in the application shall be considered as meeting the prevailing wage standard if it is within 5 percent of the average rate of wages. The prevailing wage rate under this paragraph (e)(1)(ii)(C) of this section shall be determined by:

(*1*) The SESA; or

(*2*) An independent authoritative source. See paragraph (e)(2)(ii)(C)(*2*) of this section.

(D) For purposes of this paragraph (e), *similarly employed* shall mean "having substantially comparable jobs in the occupational classification in the area of intended employment," except that if no such workers are employed by employers other than the employer applicant in the area of intended employment *similarly employed* shall mean:

(*1*) Having jobs requiring a substantially similar level of skills within the area of intended employment; or

(*2*) If there are no substantially comparable jobs in the area of intended employment, having substantially comparable jobs with employers outside of the area of intended employment.

(E) A prevailing wage determination for labor condition application purposes made pursuant to this paragraph (e) shall not permit an employer to pay a wage lower than that required under any other Federal, State or local law.

(F) Where a range of wages is paid by the employer for an occupational classification, the range is considered to meet the definition of prevailing wage so

long as the bottom of the wage range is at least at the required wage rate.

(iii) Every 24 months throughout the period of employment of the H–1B alien, starting from the date the labor condition application was approved, the employer shall obtain current prevailing wage information as set forth in paragraph (e)(2)(ii) of this section for the occupation(s) named in the labor condition application and shall adjust the rate of pay upwards where the prevailing wage has increased, unless the actual pay rate exceeds the prevailing wage.

(2) *Documentation of the wage statement.* (i) The employer shall develop and maintain documentation sufficient to meet its burden of proving the validity of the prevailing wage statement referenced in paragraph (e)(1) of this section and attested to on Form ETA 9035. The employer shall document that the wage rate(s) paid to H–1B alien(s) is/are no less than the required wage rate(s).

(ii) The employer shall retain documentation regarding the determination of the prevailing wage. This source documentation shall not be submitted to ETA with the labor condition application, but shall be retained at the employer's place of business for the length of time required in § ____.760(c) of this part. The documentation shall be made available for public examination as required in § ____.760 of this part and to DOL upon request. Such documentation shall consist of the documentation described in paragraphs (e)(2)(ii) (A), (B), or (C) of this section and the documentation described in paragraph (e)(2)(ii)(D) of this section.

(A) If the position is in an occupation which is subject to a wage determination in the area under the provisions of the Davis-Bacon Act, 40 U.S.C. 276a *et seq.* (see 29 CFR part 1), or the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351 *et seq.* (see 29 CFR part 4), the documentation shall include an excerpt from the statutory or regulatory determination showing the wage rate for the occupation in the area of intended employment.

(B) If the position is covered by a union contract which was negotiated at arms-length between a union and the employer, the documentation shall include an excerpt from the union contract showing the wage rate(s) for the occupation(s).

(C) If the position is not covered by the provisions of paragraph (e)(2)(ii) (A) or (B) of this section, the employer's documentation shall consist of:

(*1*) A prevailing wage finding from the SESA for the occupation within the area of employment; or

(*2*) A prevailing wage survey for the occupation in the area of intended employment published by an independent authoritative source. For purposes of this paragraph (e)(2)(ii)(C)(*2*), a prevailing wage survey for the occupation in the area of intended employment published by an independent source shall mean a survey of wages published in a book, newspaper, periodical, loose-leaf service, newsletter, or other similar medium, within the 24-month period immediately preceding the filing of the employer's attestation and each succeeding 24-month prevailing wage update. Such survey shall:

(*i*) Reflect the average wage paid to workers similarly employed in the area of intended employment;

(*ii*) Be based upon recently collected data—e.g., within the 24-month period immediately preceding the date of publication of the survey; and

(*iii*) Represent the latest published prevailing wage finding by the authoritative source for the occupation in the area of intended employment.

(D) The documentation shall include information about the employer's pay rate to employees in the area of intended employment and occupational classification in which the H–1B employee is to work. The employer shall maintain payroll records on all employees in the occupational classification in the area of intended employment beginning with the date the labor condition application was submitted and continuing throughout the period of employment. The records shall be retained for the period of time specified in § ____.760 of this part. The payroll records for each employee shall include:

(*1*) Employee's full name;

(*2*) Employee's home address;

(*3*) Employee's occupation;

(*4*) Employee's rate of pay;

(*5*) Hours worked each day and each week by the employee;

(*6*) Total daily or weekly straight-time earnings by employee;

(*7*) Total overtime compensation for the week by employee;

(*8*) Total additions to or deductions from pay each pay period by employee; and

(*9*) Total wages paid each pay period, date of pay and pay period covered by the payment by employee.

(iii) Every 24 months throughout the period of employment of the H-iB alien, starting from the date the labor condition application was approved, the employer shall obtain current prevailing wage information as set forth in paragraph (e)(2)(ii) of this section for the occupation(s) named in the labor condition application and shall adjust the rate of pay upwards where the prevailing wage has increased, unless the actual pay rate exceeds the prevailing wage.

(3) *Complaints.* In the event that a complaint is filed pursuant to subpart I of this part, alleging a failure to meet the "prevailing wage" condition or a material misrepresentation by the employer regarding the payment of the required wage, the Administrator shall determine whether the employer has the documentation required in paragraph (e)(2)(ii) of this section, and whether the documentation supports the employer's wage attestation. Where the documentation is either nonexistent or is insufficient to determine the prevailing wage (*e.g.*, does not meet the criteria specified in this section, in which case the Administrator may find a violation of paragraph (e)(2)(i), (ii), and/or (iii) of this section), or where, based on significant evidence regarding wages paid for the occupation in the area of intended employment, the Administrator has reason to believe that the prevailing wage finding obtained from the independent authoritative source varies substantially from the wage prevailing for the occupation in the area of intended employment, the Administrator may contact ETA, which shall provide the Administrator with a prevailing wage determination, which the Administrator shall use as the basis for the determination as to violations and for the computation of back wages, if such wages are found to be owed. For purposes of this paragraph (e)(3), ETA may consult with the appropriate SESA to ascertain the prevailing wage applicable under the circumstances of the particular complaint.

(f) *The second labor condition statement: working conditions.* An employer seeking to employ H-lB aliens in a specialty occupation shall state on Form ETA 9035 that the employment of H-IB aliens will not adversely affect the working conditions of workers similarly employed in the area of intended employment.

(1) For purposes of this paragraph (f), "similarly employed" shall mean "having substantially comparable jobs in the occupational classification in the area of intended employment," except that if no such workers are employed by employers other than the employer applicant in the area of intended employment "similarly employed" shall mean:

(i) Having jobs requiring a substantially similar level of skills within the area of intended employment; or

(ii) If there are no substantially comparable jobs in the area of intended employment, having substantially comparable jobs with employers outside of the area of intended employment.

(2) *Establishing the working conditions requirement.* The second labor condition statement is satisfied when the employer signs the labor condition application attesting that for the period of intended employment its employment of H-lB workers will not adversely affect the working conditions of workers similarly employed. Working conditions commonly refer to matters including hours, shifts, vacation periods, and fringe benefits. The employer's obligation regarding working conditions shall continue for the period of employment stated on the labor condition application.

(3) *Documentation of the working condition statement.*

(i) In the event a complaint is filed pursuant to subpart I of this part, the employer shall document the validity of the prevailing working conditions statement referenced in paragraph (f)(1) of this section and attested to on Form ETA 9035. The employer must be able to show that the working conditions of the H–1B workers and its other employees in the occupational classification(s) named in the labor condition application are similar to working conditions existing in like business establishments to the employer's, in the area of intended employment.

(ii) In the event that an investigation is conducted pursuant to subpart I of this part, concerning whether the employer failed to satisfy the prevailing working conditions statement referenced in paragraph (f)(1) of this section and attested to on Form ETA 9035, the Administrator shall determine whether the employer has produced the documentation required in § ____.730(f)(3)(i) of this section, and whether the documentation is sufficient to support the employer's prevailing working conditions statement. Where the documentation is either nonexistent (in which case the Administrator may find a violation of paragraph (f)(3)(i) of this section), or is insufficient to determine whether the employment of H–1B aliens has or has not adversely affected the working conditions of workers similarly employed in the area of intended employment, the Administrator may contact ETA which shall provide the Administrator with advice as to whether the working conditions of similarly employed workers in the area of intended employment have or have not been adversely affected by the employment of H–1B aliens.

(g) *The third labor condition statement: no strike or lockout.* An employer seeking to employ H-lB workers shall state on Form ETA 9035 that there is not at that time a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment. A strike or lockout which occurs after the labor condition application is filed by the employer with DOL is covered by INS regulations at 8 CFR 214.2(h)(16).

(1) *Establishing the no strike or lockout requirement.* The third labor condition statement is satisfied when the employer signs the labor condition application attesting that, as of the date the application is filed, it is not involved in a strike, lockout, or work stoppage in the course of a labor dispute in the occupational classification in the area of intended employment. Labor disputes for the purpose of this paragraph (g) relate only to those disputes involving employees of the employer working at the place of employment in the occupational classification named in the labor condition application. See also INS regulations at 8 CFR 214.2(h)(16) for effects of strikes or lockouts in general on the H-1B alien's employment.

(2) *Documentation of the third labor condition statement.* The employer need not develop nor maintain documentation to substantiate the statement referenced in paragraph (g)(1) of this section. In the case of an investigation, however, the employer has the burden of proof to show that there was no strike or lockout in the course of a labor dispute for the occupational classification in which an H-1B alien is employed at the time the application was filed.

(h) *The fourth labor condition statement: notice.* An employer seeking to employ H-lB workers shall state on Form ETA 9035 that the employer has provided notice of the filing of the labor condition application to the bargaining representative of the employer's employees in the occupational classification in which the H-1B workers will be employed or are intended to be employed in the area of intended employment for which the aliens are sought, or, if there is no such bargaining representative, has posted notice of filing in conspicuous locations in the employer's establishment(s) in the area of intended employment, in the manner described in this paragraph (h).

(1) *Establishing the notice requirement.* The fourth labor condition statement is established when one of the following has occurred:

(i) Where there is a collective bargaining representative in the occupational classification in which the H-1B workers will be employed, no later than on or before the date the labor condition application is filed with ETA, the employer of H-1B workers shall provide notice to the bargaining representative that a labor condition application has been filed with ETA. The notice shall identify the number of H-1B worker(s) the employer is seeking to employ; the occupational classification(s) in which the H-1B worker(s) will be employed; the wages offered; the period of employment; and the location(s) at which the H-1B workers will be employed. Notice under this paragraph (h)(1)(i) shall include the following statement: "Complaints alleging misrepresentation of material facts in the labor condition application and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division of the United States Department of Labor."

(ii) Where there is no collective bargaining representative, the employer shall, no later than on or before the date the labor condition application is filed with ETA, provide a notice of the labor condition application to its employees by posting a notice in at least two conspicuous locations at the place of employment. The notice shall indicate that H-1B workers are sought; the number of such workers the employer is seeking; the occupational classification(s); the wages offered; the period of employment; the location(s) at which the H-1B workers will be employed in the occupation(s); and that the labor condition application is available for public inspection at the employer's principal place of business in the U.S. or at the worksite. The notice shall also include the statement: "Complaints alleging misrepresentation of material facts in the labor condition application and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division of the United States Department of Labor." The posting of exact copies of the labor condition application, together with the statement regarding the filing of complaints, shall be sufficient to meet the requirements of paragraph (h)(1)(ii) of this section.

(A) The notice shall be of sufficient size and visibility, and shall be posted in two or more conspicuous places so that the employer's workers at the place(s) of employment can easily see and read the posted notice(s).

(B) Appropriate locations for posting the notices include, but are not limited to, locations in the immediate proximity of wage and hour notices required by 29 CFR 516.4 or occupational safety and health notices required by 29 CFR 1903.2(a).

(C) The notices shall be posted before the labor condition application is filed and shall remain posted for a total of 10 days.

(2) *Documentation of the fourth labor condition statement.* The employer shall develop and maintain documentation sufficient to meet its burden of proving the validity of the statement referenced in paragraph (h)(1) of this section and attested to on Form ETA 9035. Such documentation shall include a copy of the dated notice and the name and address of the collective bargaining representative to whom the notice was provided. Where there is no collective bargaining representative, the employer shall note and retain the dates when, and locations where, the notice was posted and shall retain a copy of the posted notice.

(3) *Records retention; records availability.* The employer's documentation shall not be submitted to ETA with the labor condition application, but shall be retained for the period of time specified in § ____.760(c) of this part. The documentation shall be made available for public examination as required in § ____.760(a) of this part, and shall be made available to DOL upon request.

§ ____.740 Labor condition application determinations.

(a) *Actions on labor condition applications submitted for filing.* Once a labor condition application has been received from an employer, a determination shall be made by the ETA regional Certifying Officer whether to approve the labor condition application or return it to the employer disapproved.

(1) *Approval of labor condition application.* Where all items on Form ETA 9035 have been completed and it contains the signature of the employer or its authorized agent or representative, the regional Certifying Officer shall approve the labor condition application unless it falls within one of the categories set forth in paragraph (a)(2) of this section. If the labor condition application is approved, the regional Certifying Officer shall return an approved copy of the labor condition application to the employer or the employer's authorized agent or representative. The employer shall file the approved labor condition application with the appropriate INS office in the manner prescribed by INS. The INS shall determine whether each occupational classification named in the approved labor condition application is a specialty occupation.

(2) *Disapproval of labor condition applications.* ETA shall not approve a labor condition application and shall return such application to the employer or the employer's authorized agent or representative, when either or both of the following two conditions exists:

(i) When the Form ETA 9035 is not properly completed. Examples of a Form ETA 9035 which is not properly completed include instances where the employer has failed to check all the necessary boxes; or where the employer has failed to identify the occupational classification(s) or state the number of workers sought, the wage rate, period of intended employment or date of need; or where the application does not contain the signature of the employer or the employer's authorized agent or representative.

(ii) When the Administrator, Wage and Hour Division, after notice and opportunity for a hearing pursuant to subpart I of this part, has notified ETA in writing that the employer has been disqualified from employing H–1B workers under section 212(n)(2) of the Act.

(3) *Correction and resubmission of labor condition application.* If the labor condition application is not approved pursuant to paragraph (a)(2)(i) of this section, ETA shall return it to the employer, or the employer's authorized agent or representative, explaining the reasons for such disapproval. The employer may immediately submit a corrected application to ETA. A "resubmitted" or "corrected" labor condition application shall be treated as a new application by the regional office—i.e., on a "first come, first served" basis. If the labor condition application is not approved pursuant to paragraph (a)(2)(ii) of this section, such action shall be the final decision of the Secretary.

(b) *Challenges to labor condition applications.* ETA shall not consider information contesting a labor condition application received by ETA prior to the approval or disapproval of the application. Such information shall not be made part of ETA's administrative record on the application, but shall be referred to ESA to be processed as a complaint pursuant to subpart I of this part, and, if such application is approved by ETA, the complaint will be handled by ESA under subpart I of this part.

(c) *Truthfulness and adequacy of information.* DOL is not the guarantor of the accuracy, truthfulness or adequacy of an approved labor condition application. The burden of proof is on the employer to establish the truthfulness of the information contained on the labor condition application.

§ ____.750 Validity period of the labor condition application.

(a) *Validity of approved labor condition applications.* A labor condition application which has been approved pursuant to the provisions of § ____.740 of this part shall be valid for the period of employment indicated on Form ETA 9035; however, in no event shall the validity period of a labor condition application exceed six years. Where the labor condition application contains multiple periods of intended employment, the validity period shall extend to the latest date indicated or six years, whichever comes first.

(b) *Withdrawal of approved labor condition applications.* (1) An employer who has filed a labor condition application which has been approved pursuant to § ____.740 of this part may withdraw such labor condition application at any time before the expiration of the validity period of the application, provided that:

(i) H-1B workers are not employed at the place of employment pursuant to the labor condition application; and

(ii) The Administrator has not found reasonable cause under subpart I to commence an investigation of the particular application. Any such request for withdrawal shall be null and void; and the employer shall remain bound by the labor condition application until the enforcement proceeding is completed, at which time the application may be withdrawn.

(2) Requests for withdrawals shall be in writing and shall be directed to the regional ETA Certifying Officer.

(3) Upon receipt of an employer's written request to withdraw a labor condition application, ETA shall promptly notify the Attorney General that the application has been withdrawn, unless ESA has found reasonable cause to commence an investigation.

(4) An employer shall comply with the "prevailing wage" and "prevailing working conditions" statements of its labor condition application required under § ____.730 (e) and (f) of this part, respectively, even if such application is withdrawn, as long as H-1B aliens are employed pursuant to the application, unless the application is superseded by a subsequent application which is approved by ETA.

(5) An employer's obligation to comply with the "no strike or lockout" and "notice" statements of its labor condition application (required under § ____.730 (g) and (h) of this part, respectively), shall remain in effect and the employer shall remain subject to investigation and sanctions for misrepresentation on these statements even if such application is withdrawn, regardless of whether H-1B aliens are actually employed, unless the application is superseded by a subsequent application which is approved by ETA.

(c) *Invalidation or suspension of a labor condition application.* (1) Invalidation of a labor condition application may result from enforcement action(s) by the Administrator, Wage and Hour Division, under subpart I of this part—i.e., investigation(s) conducted by the Administrator regarding the employer's failure to meet a labor condition (or substantial failure in the case of the employer's failure to meet the notice and public access conditions of the application; see §§ ____.730(h) and 760 of this part) or the misrepresentation of a material fact in an application.

(2) If, after approving a labor condition application, ETA finds that it is unacceptable because it falls within one of the categories set forth at § ____.740(a)(2)(i) or (ii) of this part, ETA shall invalidate the application and notify the Attorney General and the employer, or the employer's authorized agent or representative. ETA shall notify the Attorney General and the employer in writing of the reason(s) that the application is invalidated. When a labor condition application is invalidated because it falls within § ____.740(a)(2)(ii), such action shall be the final decision of the Secretary.

(3) Suspension of a labor condition application may result from a discovery by ETA that it made an error in approving the application because such application is incomplete or has not been signed. In such event, ETA shall immediately notify INS and the employer. When an application is suspended, the employer may immediately submit to the certifying officer a corrected or completed application.

(d) *Employers subject to disqualification.* No labor condition application shall be approved for an employer which has been found to be disqualified from participation in the H-1B program as determined in a final agency action following an investigation by the Wage and Hour Division pursuant to subpart I of this part.

§ ____.760 Public access.

(a) *Public examination.* The employer shall make a filed labor condition application and supporting documentation available for public examination at the employer's principal place of business in the U.S. or at the place of employment within one working day after the date on which the labor condition application is filed with DOL. This documentation shall include the following:

(1) A copy of the completed labor condition application, Form ETA 9035. If the application is submitted by facsimile transmission, the application containing the original signature shall be maintained by the employer;

(2) The actual wage level for the occupational classification at the place of employment in which the H-1B alien(s) is employed; actual payroll records showing rates of pay to individual employees are not required to be made available for public examination; however, these records must be made available to DOL upon request (see § ____.730(e)(2)(ii)(D) and subpart I of this part);

(3) Prevailing wage information as required by § ____.730(e) of this part; and

(4) Evidence of notification as required by § ____.730(h) of this part.

(b) *National list of applications.* ETA shall compile and maintain on a current basis a list of the labor condition applications. Such list shall be by employer, showing the occupational classification, wage rate(s), number of aliens sought, period(s) of intended employment, and date(s) of need for each employer's application. The list shall be available for public examination at the Department of Labor, 200 Constitution Avenue, NW., room N-4456, Washington, DC 20210.

(c) *Retention of records.* The employer shall retain copies of the labor condition application, prevailing wage information, and documentation showing provision of notice to bargaining representatives or employees at the place of employment for a period of one year beyond the end of the period of employment specified on the labor condition application or one year from the date the labor condition application was withdrawn, except that if a timely complaint is filed, the documentation shall be retained until the complaint is resolved through the procedures set forth in subpart I. Required payroll records for the H-1B employees and other employees in the occupational classification shall be retained at the place of employment for a period of three years from the date(s) of the creation of the record(s), except that if a timely complaint is filed, all payroll records shall be retained until the complaint is resolved through the procedures set forth in subpart I of this part.

Subpart I—Enforcement of H-1B Labor Condition Applications

§ ____.800 Enforcement authority of Administrator, Wage and Hour Division.

(a) *Authority of Administrator.* The Administrator shall perform all the Secretary's investigative and enforcement functions under section 212(n) of the INA (8 U.S.C. 1182(n)) and subparts H and I of this part.

(b) *Conduct of Investigations.* The Administrator, pursuant to a complaint, shall conduct such investigations as may be appropriate and, in connection therewith, enter and inspect such places and such records (and make transcriptions or copies thereof), question such persons and gather such information as deemed necessary by the Administrator to determine compliance regarding the matters which are the subject of the investigation.

(c) *Availability of Records.* An employer being investigated shall make available to the Administrator such records, information, persons, and places as the Administrator deems appropriate to copy, transcribe, question, or inspect. No employer subject to the provisions of section 212(n) of the INA (8 U.S.C. 1182(n)) or and subpart H or I of this part shall interfere with any official of the Department of Labor performing an investigation, inspection or law enforcement function pursuant to 8 U.S.C. 1182(n) or subpart H or I of this part. Any such interference shall be a violation of the labor condition application and these regulations, and the Administrator may take such further actions as the Administrator considers appropriate.

(**Note:** Federal criminal statutes prohibit certain interference with a Federal officer in the performance of official duties. 18 U.S.C. 111 and 18 U.S.C. 1114.)

(d) *Employer Cooperation.* An employer subject to subpart H or I of this part shall at all times cooperate in administrative and enforcement proceedings. No employer shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any person because such person has:

(1) Filed a complaint or appeal under or related to section 212(n) of the INA (8 U.S.C. 1182(n)) or subpart H or I of this part;

(2) Testified or is about to testify in any proceeding under or related to section 212(n) of the INA (8 U.S.C. 1182(n)) or subpart H or I of this part;

(3) Exercised or asserted on behalf of himself or herself or others any right or protection afforded by section 212(n) of the INA (8 U.S.C. 1182(n)) or subpart H or I of this part.

(4) Consulted with an employee of a legal assistance program or an attorney on matters related to Section 212(n) of the INA (8 U.S.C. 1182(n)) or to subpart H or I of this part or any other DOL regulation promulgated pursuant to 8 U.S.C. 1182(n).

In the event of such intimidation or restraint as are described in this paragraph (d), the conduct shall be a violation of the labor condition application and subparts H and I of this part, and the Administrator may take such further actions as the Administrator considers appropriate.

(e) *Confidentiality.* The Administrator shall, to the extent possible under existing law, protect the confidentiality of any person who provides information to the Department in confidence in the course of an investigation or otherwise under subpart H or I of this part.

§ ____.805 Complaints and investigative procedures.

(a) The Administrator, through an investigation pursuant to a complaint, shall determine whether an H–1B employer has:

(1) Filed a labor condition application with ETA which misrepresents a material fact.

(**Note:** Federal criminal statutes provide penalties of up to $10,000 and/or imprisonment of up to 5 years for knowing and willful submission of false statements to the Federal Government. 18 U.S.C. 1001; see also 18 U.S.C. 1546.);

(2) Failed to meet a condition in the labor condition application—

(i) Failed to pay wages as required under § ____.730(e) of this part;

(ii) Failed to provide the working conditions required under § ____.730(f) of this part;

(3) Filed a labor condition application for H–1B worker(s) during a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment (see § ____.730(g) of this part); or

(4) Substantially failed to provide notice of the filing of the labor condition application as required in § ____.730(h) of this part;

(5) Substantially failed to make available for public examination the attestation and its accompanying document(s) at the employer's principal place of business or worksite as required in § ____.760(a);

(6) Failed to retain documentation as required by § ____.760(c) of this part; or

(7) Failed otherwise to comply in any other manner with the provisions of subpart H or I of this part.

(b) Pursuant to §§ ____.740(a)(1) and ____.750 of this part; or the provisions of this part become effective upon the date of ETA's notification that the employer's labor condition application is approved, whether or not the employer hires any H–1B worker(s) in the occupation(s) for the period of employment covered in the labor condition application. Should the period of employment specified in the labor condition application expire or should the employer withdraw the application in accordance with § ____.750(b) of this part, the provisions of this part will no longer be in effect with respect to such application, except as provided in § ____.750(b)(4) of the part.

(c) Any aggrieved person or organization (including bargaining representatives) may file a complaint of a violation described in paragraph (a) of this section.

(1) No particular form of complaint is required, except that the complaint shall be written or, if oral, shall be reduced to writing by the Wage and Hour Division official who receives the complaint.

(2) The complaint shall set forth sufficient facts for the Administrator to determine whether an investigation is warranted, in that there is reasonable cause to believe that a violation as described in paragraph (a) of this section has been committed. This determination shall be made within 10 days of the date that the complaint is received by a Wage and Hour Division official. If the Administrator determines that the complaint fails to present reasonable cause for an investigation, the Administrator shall so notify the complainant, who may submit a new complaint, with such additional information as may be necessary. No hearing pursuant to this subpart shall be available where the Administrator determines that an investigation on a complaint is not warranted.

(3) If the Administrator determines that an investigation on the complaint is warranted, the complaint shall be accepted for filing; an investigation shall be conducted and a determination issued within 30 calendar days of the date of filing.

(4) In the event that the Administrator seeks a prevailing wage determination from ETA pursuant to § ____.730(e)(3), or advice as to prevailing working conditions from ETA pursuant to § ____.730(f)(3)(ii), the 30-day investigation period shall be suspended, from the date of the Administrator's request to the date of the Administrator's receipt of the wage determination or advice as to prevailing working conditions.

(5) The complaint must be filed not later than 12 months after the date of the alleged violation(s).

(6) The complaint may be submitted to any local Wage and Hour Division office. The addresses of such offices are found in local telephone directories. The office or person receiving such a complaint shall refer it to the office of the Wage and Hour Division administering the area in which the reported violation is alleged to have occurred.

(d) When an investigation has been conducted, the Administrator shall, pursuant to § ____.815 of this part, issue a written determination as to whether or not any violation(s) as described in paragraph (a) of this section has been committed.

§ ____.810 Remedies.

(a) Upon determining that the employer has failed to pay wages as required by § ____.730(e) of this part, the Administrator shall assess and oversee the payment of back wages to any H–1B worker or other individual employed by the employer in the occupational classification. The back wages shall be equal to the difference between the amount that should have been paid and the amount that actually was paid to such worker(s);

(b) Upon determining that the employer has committed any violation(s) described in § ____.805(a) of this part, the Administrator may assess a civil money penalty not to exceed $1,000 per violation. In determining the amount of civil money penalty to be assessed, the Administrator shall consider the type of violation committed and other relevant factors. The factors which may be considered include, but are not limited to, the following:

(1) Previous history of violation, or violations, by the employer under the Act and subpart H or I of this part;

(2) The number of workers affected by the violation or violations;

(3) The gravity of the violation or violations;

(4) Efforts made by the violator in good faith to comply with the provisions of 8 U.S.C. 1182(n) and subparts H and I of this part;

(5) The violator's explanation of the violation or violations;

(6) The violator's commitment to future compliance; and

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss, potential injury or adverse effect with respect to other parties.

(c) In addition to back wages and civil money penalties, the Administrator may impose such other administrative remedy(ies) under this subpart as the Administrator deems appropriate.

(d) The civil money penalties, back wages, and/or any other remedy(ies) determined by the Administrator to be appropriate are immediately due for payment or performance upon the assessment by the Administrator, or upon the decision by an administrative law judge where a hearing is timely requested, or the decision by the Secretary where review is granted. The employer shall remit the amount of the back wages and/or civil money penalties by certified check or money order made payable to the order of "Wage and Hour Division, Labor." The remittance shall be delivered or mailed to the Wage and Hour Division office in the manner directed in the Administrator's notice of determination. The performance of any other remedy prescribed by the Administrator shall follow procedures established by the Administrator.

§ ____.815 Written notice and service of Administrator's determination.

(a) The Administrator's determination, issued pursuant to § ____.805 of this part, shall be served on the complainant, the employer, and other known interested parties by personal service or by certified mail at the parties' last known addresses. Where service by certified mail is not accepted by the party, the Administrator may exercise discretion to serve the determination by regular mail.

(b) The Administrator shall file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the complaint and the Administrator's determination.

(c) The Administrator's written determination required by § ____.805 of this part shall:

(1) Set forth the determination of the Administrator and the reason or reasons therefor, and in the case of a finding of violation(s) by an employer, prescribe any remedies, including the amount of any back wages assessed, the amount of any civil money penalties assessed and the reason therefor, and/or any other remedies assessed.

(2) Inform the interested parties that they may request a hearing pursuant to § ____.820 of this part.

(3) Inform the interested parties that in the absence of a timely request for a hearing, received by the Chief Administrative Law Judge within 15 calendar days of the date of the determination, the determination of the Administrator shall become final and not appealable.

(4) Set forth the procedure for requesting a hearing, give the addresses of the Chief Administrative Law Judge (with whom the request must be filed) and the representative(s) of the Solicitor of labor (upon whom copies of the request must be served).

(5) Inform the parties that, pursuant to § ____.855 of this part, the Administrator shall notify ETA and the Attorney General of the occurrence of a violation by the employer.

§ ____.820 Request for hearing.

(a) Any interested party desiring to request an administrative hearing in accordance with section 556 of title 5, United States Code, on a determination issued pursuant to §§ ____.805 and ____.815 of this part shall make such request in writing to the Chief Administrative Law Judge at the address stated in the notice of determination.

(b) Interested parties may request a hearing in the following circumstances:

(1) The complainant or any other interested party may request a hearing where the Administrator determines, after investigation, that there is no basis for a finding that an employer has committed violation(s). In such a proceeding, the party requesting the hearing shall be the prosecuting party and the employer shall be the respondent; the Administrator may intervene as a party or appear as *amicus curiae* at any time in the proceeding, at the Administrator's discretion.

(2) The employer or any other interested party may request a hearing where the Administrator determines, after investigation, that the employer has committed violation(s). In such a proceeding, the Administrator shall be the prosecuting party and the employer shall be the respondent.

(c) No particular form is prescribed for any request for hearing permitted by this section. However, any such request shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the notice of determination giving rise to such request;

(4) State the specific reason or reasons why the party requesting the hearing believes such determination is in error;

(5) Be signed by the party making the request or by an authorized representative of such party; and

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto.

(d) The request for such hearing shall be received by the Chief Administrative Law Judge, at the address stated in the Administrator's notice of determination, no later than 15 calendar days after the date of the determination.

(e) The request may be filed in person, by facsimile transmission, by certified or regular mail, or by courier service. For the requesting party's protection, if the request is by mail, it should be by certified mail. If the request is by facsimile transmission, the original of the request, signed by the requestor or authorized representative, shall be filed within ten days.

(f) Copies of the request for a hearing shall be sent by the requestor to the Wage and Hour Division official who issued the Administrator's notice of determination, to the representative(s) of the Solicitor of Labor identified in the notice of determination, and to all known interested parties.

§ ____.825 Rules of practice for administrative law judge proceedings.

(a) Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this subpart.

(b) As provided in the Administrative Procedure Act, 5 U.S.C. 556, any oral or documentary evidence may be received in proceedings under this part. The Federal Rules of Evidence and subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B) shall not apply, but principles designed to ensure production of relevant and probative evidence shall guide the admission of evidence. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitive.

§ ____.830 Service and computation of time.

(a) Under this subpart, a party may serve any pleading or document by regular mail. Service on a party is complete upon mailing to the last known address. No additional time for filing or response is authorized where service is by mail. In the interest of expeditious proceedings, the administrative law

judge may direct the parties to serve pleadings or documents by a method other than regular mail.

(b) Two (2) copies of all pleadings and other documents in any administrative law judge proceeding shall be served on the attorneys for the Administrator. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., room N–2716, Washington, DC 20210, and one copy shall be served on the attorney representing the Administrator in the proceeding.

(c) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or federally-observed holiday, in which case the time period includes the next business day.

§ ____.835 Administrative law judge proceedings.

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § ____.820 of this part, the Chief Administrative Law Judge shall promptly appoint an administrative law judge to hear the case.

(b) Within 7 calendar days following the assignment of the case, the administrative law judge shall notify all interested parties of the date, time and place of the hearing. All parties shall be given at least fourteen calendar days notice of such hearing.

(c) The date of the hearing shall be not more than 60 calendar days from the date of the Administrator's determination. Because of the time constraints imposed by the Act, no requests for postponement shall be granted except for compelling reasons. Even where such reasons are shown, no request for postponement of the hearing beyond the 60-day deadline shall be granted except by consent of all the parties to the proceeding.

(d) The administrative law judge may prescribe a schedule by which the parties are permitted to file a prehearing brief or other written statement of fact or law. Any such brief or statement shall be served upon each other party in accordance with § ____.830 of this part. Posthearing briefs will not be permitted except at the request of the administrative law judge. When permitted, any such brief shall be limited to the issue or issues specified by the administrative law judge, shall be due within the time prescribed by the administrative law judge, and shall be served on each other party in accordance with § ____.830 of this part.

§ ____.840 Decision and order of administrative law judge.

(a) Within 60 calendar days after the date of the hearing, the administrative law judge shall issue a decision.

(b) The decision of the administrative law judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator; the reason or reasons for such order shall be stated in the decision.

(c) In the event that the Administrator's determination(s) of wage violation(s) and computation of back wages are based upon a wage determination obtained by the Administrator from ETA during the investigation (pursuant to § ____.730(e)(3)), the administrative law judge shall not determine the prevailing wage de novo, but shall, based on the evidence (including the ETA administrative record), either accept the wage determination or vacate the wage determination. If the wage determination is vacated, the administrative law judge shall remand the case to the Administrator, who may then refer the matter to ETA and, upon the issuance of a new wage determination by ETA, resubmit the case to the administrative law judge. Under no circumstances shall source data obtained in confidence by ETA, or the names of establishments contacted by ETA, be submitted into evidence or otherwise disclosed.

(d) The administrative law judge shall not render determinations as to the legality of a regulatory provision or the constitutionality of a statutory provision.

(e) The decision shall be served on all parties in person or by certified or regular mail.

§ ____.845 Secretary's review of administrative law judge's decision.

(a) The Administrator or any interested party desiring review of the decision and order of an administrative law judge shall petition the Secretary to review the decision and order. To be effective, such petition shall be received by the Secretary within 30 calendar days of the date of the decision and order. Copies of the petition shall be served on all parties and on the administrative law judge.

(b) No particular form is prescribed for any petition for Secretary's review permitted by this subpart. However, any such petition shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the administrative law judge decision and order giving rise to such petition;

(4) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;

(5) Be signed by the party filing the petition or by an authorized representative of such party;

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and

(7) Attach copies of the administrative law judge's decision and order, and any other record documents which would assist the Secretary in determining whether review is warranted.

(c) Whenever the Secretary determines to review the decision and order of an administrative law judge, a notice of the Secretary's determination shall be served upon the administrative law judge and upon all parties to the proceeding within 30 calendar days after the Secretary's receipt of the petition for review.

(d) Upon receipt of the Secretary's notice, the Office of Administrative Law Judges shall within fifteen calendar days forward the complete hearing record to the Secretary.

(e) The Secretary's notice shall specify:

(1) The issue or issues to be reviewed;

(2) The form in which submissions shall be made by the parties (*e.g.*, briefs);

(3) The time within which such submissions shall be made.

(f) All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210, Attention: Executive Director, Office of Administrative Appeals, room S–4309. An original and two copies of all documents shall be filed. Documents are not deemed filed with the Secretary until actually received by the Secretary. All documents, including documents filed by mail, shall be received by the Secretary either on or before the due date.

(g) Copies of all documents filed with the Secretary shall be served upon all other parties involved in the proceeding. Service upon the Administrator shall be in accordance with § ____.830(b) of this part.

(h) The Secretary's final decision shall be issued within 180 calendar days from the date of the notice of intent to review. The Secretary's decision shall be served

upon all parties and the administrative law judge.

(i) Upon issuance of the Secretary's decision, the Secretary shall transmit the entire record to the Chief Administrative Law Judge for custody pursuant to § ____.850 of this part.

§ ____.850 Administrative record.

The official record of every completed administrative hearing procedure provided by subparts H and I of this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge. Upon receipt of a complaint seeking review of the final agency action in a United States District Court, the Chief Administrative Law Judge shall certify the official record and shall transmit such record to the clerk of the court.

§ ____.855 Notice to the Employment and Training Administration and the Attorney General.

(a) The Administrator shall notify the Attorney General and ETA of the final determination of a violation by an employer upon the earliest of the following events:

(1) Where the Administrator determines that there is a basis for a finding of violation by an employer, and no timely request for hearing is made pursuant to § ____.820 of this part; or

(2) Where, after a hearing, the administrative law judge issues a decision and order finding a violation by an employer; or

(3) Where the administrative law judge finds that there was no violation by an employer, and the Secretary, upon review, issues a decision pursuant to § ____.845 of this part, holding that a violation was committed by an employer.

(b) The Attorney General, upon receipt of notification from the Administrator pursuant to paragraph (a), shall not approve petitions filed with respect to that employer under sections 204 or 214(c) of the Act (8 U.S.C. 1154 and 1184(c)) during a period of at least one year for aliens to be employed by the employer.

(c) ETA, upon receipt of the Administrator's notice pursuant to paragraph (a) of this section, shall suspend the employer's labor condition application(s) under subparts H and I of this part, and shall not accept for filing any application or attestation submitted by the employer under 20 CFR part 656 or subparts A, B, C, D, E, H or I of this part, for a period of 12 months or for a longer period if such is specified by the Attorney General for visa petitions filed by that employer under sections 204 and 214(c) of the Act.

Adoption of the Joint Rule

The agency-specific adoption of the joint rule, which appears at the end of the common preamble, appears below:

TITLE 20—EMPLOYERS' BENEFITS

CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

Accordingly, chapter V of title 20, Code of Federal Regulations, is amended as follows:

PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

1. The authority citation for Part 655 is revised to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H) (i) and (ii), 1182 (m) and (n), 1184, 1188, and 1288(c); 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note); and sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

§ 665.00 issued under 8 U.S.C. 1101(a)(l5)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184, 29 U.S.C. 49 *et seq.;* and 8 CFR 214.2(h)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); and 29 U.S.C. 49 *et seq.*

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; and 29 U.S.C. 49 *et seq.*

2. Section 655.0 is amended by adding a new paragraph (d) to read as follows:

§ 655.0 Scope and purpose of part.

* * * * *

(d) *Subparts H and I of this part.* Subparts H and I of this part set forth the process by which employers can file with, and the requirements for obtaining approval from, the Department of Labor of labor condition applications necessary for the purpose of petitioning INS for H–1B visas for aliens to be employed in specialty occupations, and the enforcement provisions relating thereto.

3. Part 655 is amended by adding new Subparts H and I as set forth at the end of the common preamble.

Subpart H—Labor Condition Applications and Requirements for Employers Using Aliens on H–1B Visas in Specialty Occupations

Sec.

655.700 Purpose, procedure and applicability of subparts H and I of this part.
655.705 Overview of responsibilities.
655.710 Complaints.
655.715 Definitions.
655.720 Addresses of Department of Labor regional offices.
655.730 Labor condition application.
655.740 Labor condition application determinations.
655.750 Validity period of the labor condition application.
655.760 Public access.

Subpart I—Enforcement of H–1B Labor Condition Applications

655.800 Enforcement authority of Administrator, Wage and Hour Division.
655.805 Complaints and investigative procedures.
655.810 Remedies.
655.815 Written notice and service of Administrator's determination.
655.820 Request for hearing.
655.825 Rules of practice for administrative law judge proceedings.
655.830 Service and computation of time.
655.835 Administrative law judge proceedings.
655.840 Decision and order of administrative law judge.
655.845 Secretary's review of administrative law judge's decision.
655.850 Administrative record.
655.855 Notice to the Employment and Training Administration and the Attorney General.

Signed at Washington, DC, this 16th day of October, 1991.

Roberts T. Jones,

Assistant Secretary of Employment and Training.

Cari M. Dominguez,

Assistant Secretary for Employment Standards.

Lynn Martin,

Secretary of Labor.

TITLE 29—LABOR

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

Accordingly, title 29, Code of Federal Regulations is amended by adding a new part 507 to read as follows, and subparts H and I are added to new part 507 as set forth in this document.

PART 507—ENFORCEMENT OF H-1B LABOR CONDITION APPLICATIONS

Subparts A, B, C, D, E, F, and G [Reserved]

Subpart H—Labor Condition Applications and Requirements for Employers Using Aliens on H-1B Visas in Specialty Occupations

Sec.

507.700 Purpose, procedure and applicability of subparts H and I of this part.
507.705 Overview of responsibilities.
507.710 Complaints.
507.715 Definitions.
507.720 Addresses of Department of Labor regional offices.
507.730 Labor condition application.
507.740 Labor condition application determinations.
507.750 Validity period of the labor condition application.
507.760 Public access.

Subpart I—Enforcement of H-1B Labor Condition Applications

Sec.

507.800 Enforcement authority of Administrator, Wage and Hour Division.
507.805 Complaints and investigative procedures.
507.810 Remedies.
507.815 Written notice and service of Administrator's determination.
507.820 Request for hearing.
507.825 Rules of practice for administrative law judge proceedings.
507.830 Service and computation of time.
507.835 Administrative law judge proceedings.
507.840 Decision and order of administrative law judge.
507.845 Secretary's review of administrative law judge's decision.
507.850 Administrative record.
507.855 Notice to the Employment and Training Administration and the Attorney General.

Authority: 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; and 29 U.S.C. 49 *et seq.*

Signed at Washington, DC, this 16th d y of October, 1991.

Roberts T. Jones,

Assistant Secretary of Employment and Training.

Cari M. Dominguez,

Assistant Secretary for Employment Standards.

Lynn Martin,

Secretary of Labor.

Appendix 1 (Not to Be Codified in the CFR): Form ETA 9035

Printed below is a copy of *Form ETA 9035.*

BILLING CODE 4510-30-M; 4510-27-M

Labor Condition Application for H-1B Nonimmigrants

U.S. Department of Labor
Employment and Training Administration
U.S. Employment Service

OMB Approval No.: 1205-0310

1. Full Legal Name of Employer

2. Federal Employer I.D. Number

3. Telephone No. ( )

4. FAX No. ( )

5. Employer's Address (No., Street, City, State, and ZIP Code)

6. Address Where Documentation Is Kept (If different than item 5)

7. OCCUPATIONAL INFORMATION (Use Attachment if additional space is needed)

(a) Three -Digit Occupational Groups Code	(b) Job Title (Check ✓ if position is part-time)	(c) No. of Aliens	(d) Rate of Pay	(e) Period of Employment From	To	(f) Location(s) Where Alien(s) will work (see instructions)
		☐				
		☐				
		☐				
		☐				

8. EMPLOYER LABOR CONDITION STATEMENTS (Employers are required to develop and maintain documentation supporting each labor condition statement except 8(c). Employers are further required to make available for public examination a copy of the labor condition application and supporting documentation within one (1) working day after the date on which the application is filed with DOL. Check **each** box to indicate that you will comply with **each** statement.)

☐ (a) H-1B nonimmigrants and other similarly employed workers will be paid the actual wage for the occupation at the place of employment or the prevailing wage level for the occupation in the area of employment, whichever is higher.

☐ (b) The employment of H-1B nonimmigrant workers will not adversely affect the working conditions of workers similarly employed in the area of intended employment.

☐ (c) On the date this application is signed and submitted, there is not a strike, lockout or work stoppage in the course of a labor dispute in the occupations at the place of employment.

☐ (d) As of this date, notice of this application has been provided to workers employed in the occupations in which H-1B workers will be employed: (check appropriate box)

- ☐ (i) Notice of this filing has been provided to the bargaining representative of workers in the occupations in which H-1B workers will be employed; or
- ☐ (ii) There is no such bargaining representative; therefore, a notice of this filing has been posted in a conspicuous place where H-1B nonimmigrant workers will be employed.

9. DECLARATION OF EMPLOYER: Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the information provided on this form is true and correct. In addition, I declare that I will comply with the Department of Labor regulations governing this program and, in particular, that I will make this application, supporting documentation, and other records, files and documents available to officials of the Department of Labor, upon such official's request, during any investigation under this application or the Immigration and Nationality Act.

Name and Title of Hiring or Other Designated Official

Signature

Date

FOR U.S. GOVERNMENT AGENCY USE ONLY: **By virtue of my signature below, I acknowledge that this application is hereby approved and will be valid from** _____ **through** _____.

Signature and Title of Authorized DOL Official

ETA Case No.

Subsequent DOL Action: Suspended _____(date) Invalidated _____(date) Withdrawn _____(date)

The Department of Labor is not the guarantor of the accuracy, truthfulness or adequacy of an approved labor condition application.

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N1301, 200 Constitution Avenue, N.W., Washington D.C. 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1205-0310), Washington, D.C. 20503.

INSTRUCTIONS FOR COMPLETING FORM ETA 9035 LABOR CONDITION APPLICATION FOR H-1B NONIMMIGRANTS

IMPORTANT: READ CAREFULLY BEFORE COMPLETING FORM

Print legibly in ink or use a typewriter. Sign and date one form in original signature. Citations below to "regulations" are citations to identical provisions at 20 CFR 655, Part 655, Subparts H and I, and to 29 CFR 507, Subparts H and I.

To knowingly furnish any false information in the preparation of this form and any supporting documentation thereto, or to aid, abet or counsel another to do so is a felony, punishable by $10,000 fine or five years in the penitentiary, or both (18 U.S.C. 1001). Other penalties apply as well to fraud or misuse of this immigration document (U.S.C. 1546) and to perjury with respect to this form (18 U.S.C. 1546 and 1621).

Employers seeking to hire an H-1B nonimmigrant worker(s) in a specialty occupation must submit the completed and dated original Form ETA 9035 (or a facsimile) and one copy of the completed original Form ETA 9035 to the Regional Certifying Officer in the Department of Labor (DOL), Employment and Training Administration (ETA) Regional Office having jurisdiction over the State in which the position is located. See 20 CFR 655.720 for ETA Regional Office addresses.

Item 1. Full Legal Name of Employer. Enter full legal name of business, firm or organization, or, if an individual, enter name used for legal purposes on documents.

Item 2. Federal Employer I.D. Number. Enter employer's Federal Employer identification Number (EIN) assigned by the Internal Revenue Service.

Item 3. Telephone. Self-explanatory.

Item 4. FAX No. Self-explanatory.

Item 5. Employer's Address. Self-explanatory.

Item 6. Address Where Documentation Is Kept. (If different than item 5). Self-explanatory.

Item 7. Occupational Information. Enter the information requested under the appropriate subheading. If necessary, continue on an attachment.

Item 7(a). Three Digit Occupational Groups Code. Enter the three-digit code which most closely describes the job(s) to be performed.

Item 7(b). Job Title. Enter the common name(s) or payroll title(s) of the job(s) being offered. Check box to the right of the blank if position is part-time.

Item 7(c). Number of Aliens. Enter the number of H-1B workers that will be hired in the three-digit occupational code stated in item 7(a).

Item 7(d). Rate of Pay. Enter the salary to be paid in terms of the amount per hour, week, year, etc.

Item 7(e). Period of Employment. Enter the starting and ending dates during which the alien will be employed.

Item 7(f). Location(s) Where Alien(s) Will Work. Enter the city and state of site or location where the work will actually be performed.

Item 8. Employer Labor Condition Statements. The employer must attest by checking off the conditions listed in (a) through (d) and by signing the application form. Employers must develop and maintain documentation to support each labor condition statement except 8(c). Documentation in support of a labor condition application shall be retained at the employer's place of business or worksite and made available to DOL upon such official's request. See **20 CFR 655.730** for guidance on the documentation that must support each labor condition statement.

Item 8(a). The employer must attest that H-1B nonimmigrants and other individuals employed in the occupations named will be paid wages which are the higher of the actual wage level for the occupational classification at the place of employment or the prevailing wage level for the occupational classification in the area of employment.

Item 8(b). The employer must attest that the employment of H-1B nonimmigrants in the occupations named will not adversely affect the working conditions of workers similarly employed in the occupational classification.

Item 8(c). The employer must attest that on the date the application is signed and submitted, there is not a strike, lockout or work stoppage in the course of a labor dispute in the named occupations at the worksite.

Item 8(d). The employer must attest that as of the date of filing, notice of the labor condition application has been provided to workers employed in the named occupations. The application may be provided to the workers through the bargaining representative, or where there is no such bargaining representative, notice of the filing must be posted in a conspicuous place where H-1B nonimmigrant workers will be employed.

Item 9. Declaration of Employer. One copy of this form must bear the original signature of the employer. By signing this form, the employer is attesting to the accuracy of the labor condition statements listed in items 8(a) through (d) and to compliance with these conditions. False statements are subject to Federal criminal penalties, as stated above. Failure to meet a condition of the application regarding wages, working conditions, and strikes or lockouts, or substantial failure to meet a condition of the application regarding notification of the bargaining unit representative or employees, or misrepresentation of a material fact may result in additional penalties.

BILLING CODE 4510-30-C; 4510-27-C

Appendix 2 (Not to be Codified in the CFR): DOT Three-Digit Occupational Groups Codes for Professional, Technical and Managerial Occupations

Printed below is a copy of DOT Three-Digit Occupational Groups Codes for Professional, Technical and Managerial Occupations.

BILLING CODE 4510-30-M; 4510-27-M

THREE-DIGIT OCCUPATIONAL GROUPS

PROFESSIONAL, TECHNICAL AND MANAGERIAL OCCUPATIONS

OCCUPATIONS IN ARCHITECTURE, ENGINEERING AND SURVEYING

001 ARCHITECTURAL OCCUPATIONS
002 AERONAUTICAL ENGINEERING OCCUPATIONS
003 ELECTRICAL/ELECTRONIC ENGINEERING OCCUPATIONS
005 CIVIL ENGINEERING OCCUPATIONS
006 CERAMIC ENGINEERING OCCUPATIONS
007 MECHANICAL ENGINEERING OCCUPATIONS
008 CHEMICAL ENGINEERING OCCUPATIONS
010 MINING AND PETROLEUM ENGINEERING OCCUPATIONS
011 METALLURGY AND METALLURGICAL ENGINEERING OCCUPATIONS
012 INDUSTRIAL ENGINEERING OCCUPATIONS
013 AGRICULTURAL ENGINEERING OCCUPATIONS
014 MARINE ENGINEERING OCCUPATIONS
015 NUCLEAR ENGINEERING OCCUPATIONS
019 OTHER OCCUPATIONS IN ARCHITECTURE, ENGINEERING AND SURVEYING

OCCUPATIONS IN MATHEMATICS AND PHYSICAL SCIENCES

020 OCCUPATIONS IN MATHEMATICS
021 OCCUPATIONS IN ASTRONOMY
022 OCCUPATIONS IN CHEMISTRY
023 OCCUPATIONS IN PHYSICS
024 OCCUPATIONS IN GEOLOGY
025 OCCUPATIONS IN METEOROLOGY
029 OTHER OCCUPATIONS IN MATHEMATICS AND PHYSICAL SCIENCES

COMPUTER-RELATED OCCUPATIONS

030 OCCUPATIONS IN SYSTEMS ANALYSIS AND PROGRAMMING
031 OCCUPATIONS IN DATA COMMUNICATIONS AND NETWORKS
032 OCCUPATIONS IN COMPUTER SYSTEM USER SUPPORT
033 OCCUPATIONS IN COMPUTER SYSTEMS TECHNICAL SUPPORT
039 OTHER COMPUTER-RELATED OCCUPATIONS

OCCUPATIONS IN LIFE SCIENCES

040 OCCUPATIONS IN AGRICULTURAL SCIENCES
041 OCCUPATIONS IN BIOLOGICAL SCIENCES
045 OCCUPATIONS IN PSYCHOLOGY
049 OTHER OCCUPATIONS IN LIFE SCIENCES

OCCUPATIONS IN SOCIAL SCIENCES

050 OCCUPATIONS IN ECONOMICS
051 OCCUPATIONS IN POLITICAL SCIENCE
052 OCCUPATIONS IN SOCIOLOGY
055 OCCUPATIONS IN ANTHROPOLOGY
059 OTHER OCCUPATIONS IN SOCIAL SCIENCES

OCCUPATIONS IN MEDICINE AND HEALTH

070 PHYSICIANS AND SURGEONS
071 OSTEOPATHS
072 DENTISTS
073 VETERINARIANS
074 PHARMACISTS
076 THERAPISTS
077 DIETITIANS
078 OCCUPATIONS IN MEDICAL AND DENTAL TECHNOLOGY
079 OTHER OCCUPATIONS IN MEDICINE AND HEALTH

OCCUPATIONS IN EDUCATION

090 OCCUPATIONS IN COLLEGE AND UNIVERSITY EDUCATION
091 OCCUPATIONS IN SECONDARY SCHOOL EDUCATION
092 OCCUPATIONS IN PRESCHOOL, PRIMARY SCHOOL, AND KINDERGARTEN EDUCATION
094 OCCUPATIONS IN EDUCATION OF PERSONS WITH DISABILITIES
096 HOME ECONOMISTS AND FARM ADVISERS
097 OCCUPATIONS IN VOCATIONAL EDUCATION
099 OTHER OCCUPATIONS IN EDUCATION

OCCUPATIONS IN MUSEUM, LIBRARY, AND ARCHIVAL SCIENCES

100 LIBRARIANS
101 ARCHIVISTS
102 MUSEUM CURATORS AND RELATED OCCUPATIONS
109 OTHER OCCUPATIONS IN MUSEUM, LIBRARY AND ARCHIVAL SCIENCES

OCCUPATIONS IN LAW AND JURISPRUDENCE

110 LAWYERS
111 JUDGES
119 OTHER OCCUPATIONS IN LAW AND JURISPRUDENCE

OCCUPATIONS IN RELIGION AND THEOLOGY

120 CLERGY
129 OTHER OCCUPATIONS IN RELIGION AND THEOLOGY

OCCUPATIONS IN WRITING

131 WRITERS
132 EDITORS, PUBLICATION, BROADCAST, AND SCRIPT
139 OTHER OCCUPATIONS IN WRITING

OCCUPATIONS IN ART

142 ENVIRONMENTAL, PRODUCT AND RELATED DESIGNERS
149 OTHER OCCUPATIONS IN ART

OCCUPATIONS IN ENTERTAINMENT AND RECREATION

152 OCCUPATIONS IN MUSIC
159 OTHER OCCUPATIONS IN ENTERTAINMENT AND RECREATION

OCCUPATIONS ADMINISTRATIVE SPECIALIZATIONS

160 ACCOUNTANTS, AUDITORS, AND RELATED OCCUPATIONS
161 BUDGET AND MANAGEMENT SYSTEMS ANALYSIS OCCUPATIONS
164 ADVERTISING MANAGEMENT OCCUPATIONS
165 PUBLIC RELATIONS MANAGEMENT OCCUPATIONS
168 PERSONNEL MANAGEMENT OCCUPATIONS
169 OTHER OCCUPATIONS IN ADMINISTRATIVE SPECIALIZATIONS

MANAGERS AND OFFICIALS

180 AGRICULTURE, FORESTRY, AND FISHING INDUSTRY MANAGERS AND OFFICIALS
181 MINING INDUSTRY MANAGERS AND OFFICIALS
182 CONSTRUCTION INDUSTRY MANAGERS AND OFFICIALS
183 MANUFACTURING INDUSTRY MANAGERS AND OFFICIALS
184 TRANSPORTATION, COMMUNICATION, AND UTILITIES INDUSTRY MANAGERS AND OFFICIALS
185 WHOLESALE AND RETAIL TRADE MANAGERS AND OFFICIALS
186 FINANCE, INSURANCE AND REAL ESTATE MANAGERS AND OFFICIALS
187 SERVICE INDUSTRY MANAGERS AND OFFICIALS
188 PUBLIC ADMINISTRATION MANAGERS AND OFFICIALS
189 MISCELLANEOUS MANAGERS AND OFFICIALS

MISCELLANEOUS PROFESSIONAL, TECHNICAL, AND MANAGERIAL OCCUPATIONS

195 OCCUPATIONS IN SOCIAL AND WELFARE WORK
199 MISCELLANEOUS PROFESSIONAL, TECHNICAL AND MANAGERIAL OCCUPATIONS

[FR Doc. 91–25281 Filed 10–21–91; 8:45 am]

BILLING CODE 4510–30–C; 4510–27–C

federal register

Tuesday
October 22, 1991

Part XI

Department of Justice

Office of Justice Programs
Office of Juvenile Justice and Delinquency Prevention

Missing Children's Assistance Act; Fiscal Year 1992 Competitive Discretionary Grant Program; National Resource Center and Clearinghouse; Notice

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Assistance Act; Fiscal Year 1992 Competitive Discretionary Grant Program; National Resource Center and Clearinghouse

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of issuance of solicitation for applications to continue the provision of the national resource center and clearinghouse, technical assistance, training and associated services concerning missing and exploited children.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) pursuant to section 440(b) of the Missing Children's Assistance Act of 1988, title IV of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended through December 31, 1989, 42 U.S.C. 5773 *et seq.*, requires the Administrator of OJJDP, through grants or contracts, to support, develop, and implement programs that will coordinate and facilitate activities that provide technical assistance and training that will be of assistance to parents, legal guardians, state, local criminal justice and nonprofit agencies with respect to those issues associated with missing and exploited children as defined by title IV.

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing this Notice of a Competitive Discretionary Grant Program and announcing the availability of the OJJDP application kit. The program announcement that follows contains specific instructions on competitive program requirements, including eligibility requirements and selection criteria. Following the program announcement is a section that summarizes general application and administrative requirements.

This solicitation is to continue the maintenance and management of activities, program development and fiscal support necessary to sustain those services required of a national resource center and clearinghouse by title IV, the Missing Children Act.

The award will be made for a project period of 3 years. One cooperative agreement will be awarded with an initial budget period of 12 months. Up to $3,100,000 will be allocated for the initial 12 month award. Subsequent funding and services support will be determined by the performance of the grantee and program development needs as determined by the Administrator of OJJDP.

DATE: All applications must be received by 5 p.m. e.s.t., December 6, 1991. Applications received after the deadline date will not be considered.

ADDRESSES: Applications must be mailed or sent to: Robert O. Heck, Program Manager, Special Emphasis Division, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Robert O. Heck, Program Manager, at the above address. Telephone (202) 307–5914.

Purpose

This solicitation is to continue the maintenance and management of activities, program development and fiscal support necessary to sustain those services required of a national resource center and clearinghouse by title IV, the Missing Children Act.

Background

The Administrator of OJJDP awarded a grant, with discretionary funds, to the National Center for Missing and Exploited Children (NCMEC) in April of 1984. Title IV of the JJDP Act was enacted by Congress on October 12, 1984. The original award was to establish a national resource center and clearinghouse designed to provide technical assistance to State and local governments, individuals, parents, and other agencies in locating and recovering missing children; to coordinate programs in the field that focus on reuniting missing children with their lawful custodians; to develop, publish, and disseminate instructive materials about programs, techniques, and services responsive to missing children issues; and to provide technical assistance as well as training to law enforcement agencies, State and local government agencies, individuals, and other agencies addressing missing children issues relative to prevention, investigation, re-unification, and treatment in missing and exploited children cases.

This solicitation conforms to title IV, Missing Children Act provisions as they are applied through the Juvenile Justice and Delinquency Prevention Act of 1974 as amended through December 31, 1989.

Objectives

(1) To continue the national operation of a 24-hour national toll-free telephone line by which individuals may report information regarding the location of any missing child, or other children 13 years of age or younger, whose whereabouts are unknown to such child's legal custodian, and request information pertaining to procedures necessary to reunite the child with the child's legal custodian.

(2) To continue the operation of a national resource center and clearinghouse designed:

- To provide information to State and local governments, public and private nonprofit agencies, and individuals regarding:
  - —Free or low cost legal, restaurant, lodging, and transportation services that are available for the benefit of missing children and their families;
  - —The existence and nature of programs being carried out by Federal Agencies to assist missing children and their families; and
  - —The lawful use of school records and birth certificates to identify and locate missing children.
- To provide technical assistance and training to State and local governments including law enforcement and other appropriate entities in:
  - —Investigating, reporting, locating, recovering, and facilitating the reuniting of missing children with their families and/or lawful custodians;
  - —Parental kidnapping cases;
  - —National and/or regional missing children poster distribution;
  - —Developing and distributing information and training publications relevant to missing, abducted, and exploited children's issues; and
  - —Providing case management, sighting and lead information analysis assistance for missing children cases.
- To provide technical assistance and training to criminal justice, juvenile justice, private nonprofit agencies, individuals and other youth service professionals in:
  - —Facilitating and assisting in the reporting, searching, locating, recovering, and the reuniting of missing children with their families and/or lawful custodians; and
  - —Parental kidnapping cases;
  - —National and/or regional missing children poster distribution; and
  - —Developing and distributing information and training publications relevant to missing, abducted and exploited children's issues.
- To coordinate public and private programs that locate, recover or reunite missing children with their legal custodians.
- To provide training and disseminate nationally information about innovative

and model missing children programs, services, and legislation at the State and local level.

• To provide technical assistance and training to appropriate agencies and custodial parents in cases of national and international noncustodial parental kidnapping and coordinate efforts with the U.S. Department of State and Interpol.

• To monitor ongoing missing child case work that has been undertaken in over 15,000 missing child cases. Some of the tasks involved in this case work are as follows: technical assistance contacts with parents, law enforcement, private attorneys, prosecutors, F.B.I., Interpol, State Department and support groups; and case follow-up activities verifying full NCIC entries, review of recent sightings and providing relevant sighting pattern analysis and leads to appropriate cognizant agencies in a timely manner.

• To provide, when appropriate, state-of-the-art image enhancement and aging procedures for follow-up on long term missing children cases.

• To provide and maintain a computer information network connection with State Missing Children Agencies to facilitate the exchange of appropriate missing children case information, and technical assistance and training information developed by or through the National Clearinghouse.

Program Strategy

This solicitation and resulting cooperative agreement is to ensure the effective continuance by OJJDP of a national resource center and clearinghouse function for the training and technical assistance program to law enforcement agencies, State and local governments, entities of the criminal justice system, public and private nonprofit agencies, and individuals in the prevention, investigation, prosecution, and treatment of abducted, missing, and exploited children and in assisting, locating, and reuniting the missing children with their families or legal custodians.

The successful applicant must demonstrate the experienced capability to provide timely, relevant professional program continuity for the national resource center and clearinghouse program. The successful applicant must demonstrate, in detail, the ability to enlist, train and manage the technical and professional personnel that will provide knowledgeable, credible program continuation and professional program technology transfer to parents, criminal justice system professionals, and nonprofit and community agencies.

The operation of the missing children national resource center and clearinghouse program requires the applicant to provide and arrange for all necessary operational, training and technical assistance personnel, facilities, equipment, materials, and services required for the successful continuation of the existing program activities. These include the following activities:

• The provision to State and local governments, public and private nonprofit agencies, and individuals information regarding free or low cost legal, restaurant, lodging, and transportation services that are available for the benefit of missing children and their families;

• The provision to State and local governments, public and private nonprofit agencies, and individuals information regarding the existence and nature of programs being carried out by Federal agencies to assist missing/exploited children and their families;

• The provision of technical assistance and training to criminal justice agencies, State and local governments, elements of the criminal justice and youth service system, public and private nonprofit agencies, organized missing/exploited children community organizations, and individuals in locating, recovering, and reuniting missing children with their family or legal custodian;

• The provision of a national 24-hour toll-free telephone line by which individuals may report information regarding the location of any missing child, and request information pertaining to the necessary procedures to reunite such child with the child's legal custodian(s);

• The provision of information derived from the national 24-hour toll-free telephone line to appropriate cognizant entities;

• The coordination of the operation of the 24-hour toll-free telephone line with the operation of the national communications system established to service runaways (under section 313 of the Runaway Homeless Youth Act, 42 U.S.C. 5712a);

• The coordination of public and private programs which seek to locate, recover, or reunite missing children with their legal custodians;

• The dissemination of information about and the provision of technical assistance and training regarding comprehensive, innovative, community, multi-agency missing children programs, services, and legislation;

• The provision of information to State and local governments, public and private nonprofit agencies and individuals to facilitate the lawful use of school records and birth certificates to identify and locate missing children; and

• The provision of technical assistance and training for State Clearinghouses established to assist in locating and recovering missing children.

Eligibility Requirements

Applications are invited from public agencies and not-for-profit private organizations. Applicant organizations may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the applicant and co-applicants are designated as such. The applicant and co-applicants must demonstrate fully the required experience to deliver continuation support services as required in section VI. Applicants must demonstrate, in addition to program knowledge and support experience, programmatic and fiscal management capabilities to implement a project of this size and scope effectively. Applicants who fail to demonstrate that they have the experienced capability to manage a program of this size and complexity will be ineligible for funding consideration.

Specific Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF 424); a Standard Form 424A, Budget Information; OJP Form 4000/3, Assurances; and OJP Form 4061/6, Certifications. In addition to these forms, all applications must include a project summary, a budget narrative, and a program narrative.

All forms must be typed. The SF 424 must appear as a cover sheet for the entire application. The project summary should follow the SF 424. All other forms must then follow. Applicants should be sure to sign OJP Forms 4000/3 and 4061/6.

The project summary must not exceed 250 words. It must be clearly marked and typed single spaced on a single page. Applicants should take care to write a description that accurately and concisely reflects the proposal.

The program narrative must be typed double spaced on one side of a page only. The program narrative may not exceed 60 pages. The program narrative must include all items indicated in the *Selection Criteria* section of this solicitation. This page limit does not apply to supporting materials normally found in appendices (such as preliminary surveys, resumes, and supporting charts or graphs).

In submitting applications that contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations that describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. Under this arrangement, each organization must agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF 424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicant.

Applications that include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $25,000. The contractor may not be involved in the development of the statement of work. The applicant must provide sufficient justification for not offering for competition the portion of work proposed to be contracted.

The following information must be included in the application Program Narrative (part IV of SF 424):

(1) Organizational Capability: The applicant must demonstrate that it is eligible to compete for this cooperative agreement and have substantial organizational experience and resources that can be directly applied to provide programmatic support that will assure OJJDP the effective continuance of a national resource center and clearinghouse function for: The 24 hour national toll free telephone line; the information analysis of sighting and leads; case management experience, procedures and data base information technology support to handle case processing procedures effectively and responsively for over 15,000 missing children cases; and the provision of the training and technical assistance programs to law enforcement agencies, State and local governments, elements of the criminal justice system, public and private nonprofit agencies, and individuals in the prevention, investigation, prosecution, and treatment of the missing and exploited children cases and in assisting in the locating and reuniting of the missing children with families or legal custodians.

The criteria used evaluating applicants is based upon the responsiveness of the applicant to the program information and descriptions found in this solicitation. Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of eligibility criteria established in this notice.

- Organizational Experience:

—The applicant must demonstrate the requisite knowledge of and experience with the missing and exploited children issue necessary to provide capable, responsible management of a national resource center and clearinghouse.

—The applicant must demonstrate experience and expertise in providing technical assistance and training to a diverse audience requiring such services with regard to the missing and exploited children issues described in this solicitation.

—The applicant must demonstrate the ability to develop as well as provide missing and exploited children issue-related training and service oriented training materials to the recipient jurisdictional, professional, citizen, and community needs.

—The applicant must demonstrate the ability to provide for national missing children sighting analysis and case management practices that can collate national sightings, lead and case information in a relevant, timely manner to assist, facilitate and coordinate multi-jurisdictional, national and international missing children investigations.

—The applicant must demonstrate extensive state-of-the-art information technology experience to manage, facilitate and service high volume electronic assisted response for technical assistance information needs and exchanges that require fast, accurate responses.

—The applicant must demonstrate the ability to provide continuity of comprehensive missing and exploited children issue services in response to the program objectives and strategies described in this solicitation.

- Program Goals and Objectives: A succinct statement demonstrating the applicant's understanding of the objectives and tasks associated with the program must be included. The application must also include a problem statement and a discussion of the past and potential future contributions of the applicant's program to the missing and exploited children issues required to be performed by a national missing and exploited children's clearinghouse and resource center. The applicant must describe the proposed approach for achieving the objectives of the program and the requirements of the program strategy as detailed in this announcement.

- Program Implementation Plan: The applicant must describe its proposed approach to achieving the goals and objectives of the project. A program implementation plan outlining the major activities involved in implementing the program, resource allocation, the program management must be included. A clear time-task workplan identifying major milestones, tasks, and products should be a part of the application.

The applicant should include an organizational chart depicting the roles and responsibilities of key personnel and organizational functional components that will be responsible for supporting and implementation of the program. The applicant should provide detailed position descriptions, qualifications, and criteria for selection for the positions. Part-time and practitioner professionals should also be included, with a statement of their qualifications and experience that would directly relate to the service needs of this program. The applicant should denote which staff members are considered key project personnel and emphasize their position experience.

- Program Budget: The applicant must provide a three year budget to be prepared by year. Any co-applicant associated costs must be detailed separately and accounted for in as much detail as the principal applicant. The applicant must provide a detailed justification for all costs by object class category as specified in the SF 424. Costs must be reasonable and the basis for these costs must be well documented in a separate budget narrative.

- Products: A concise description of the products to be produced should be included. The applicant must describe existing and future program activities and products that have and will be developed or utilized to continue to service the program; and should describe how and who will be served by these products.

Selection Criteria

In general, all applications will be reviewed in terms of their demonstrated past, present and potential ability to continue the development and provide the requisite services of a national resource center and clearinghouse for servicing missing and exploited children issues, as they are defined under title IV, The Missing Children's Act. The experience and knowledge involved for delivery of these services in a capable, efficient and professional manner is, of course, a vital criteria for selection.

All applicants will be evaluated and rated based on the extent to which they meet the following criteria:

(1) Organizational and programmatic capability must be demonstrated. The project management structure must be adequate for the successful conduct of the project. The applicant must have demonstrated clearinghouse and resource center program management and information technology capabilities and experience and capabilities in the areas described and defined throughout this solicitation; experience working with the various missing children issue groups and agencies at the national, state, municipal, community, individual levels, and international levels; providing technical assistance, training and information products related to missing and exploited children; providing missing child case assistance and coordination; promoting the development of professional approaches to missing children issues; providing assistance in organizational development processes for improved multi-agency delivery of services relating to missing children issues; and the relevant experience of applicant's staff in the missing children issues and their capabilities to address the perceived program needs. Fiscal integrity and organizational stability must be demonstrated over time. (35 points)

(2) The applicant must have demonstrated understanding of an approach to implementing the program objectives of organizing, providing and maintaining the high level service delivery demands of a national resource center and clearinghouse for missing children. (30 points)

(3) The qualifications of staff members identified to manage and implement the program, including consultants, must be adequate for the successful implementation of the objectives. (25 points)

(4) The applicant must provide a sound and fully-justified budget that is cost effective to the service provided. The proposed costs must be complete, appropriate, and reasonable to the activities of the project. All costs should be fully justified in a budget narrative or with other supporting documentation. (10 points)

Award Period

The program period for the cooperative agreement supporting the Missing and Exploited Children National Resource Center and Clearinghouse is three (3) years. One cooperative agreement will be awarded with an initial budget period of 12 months.

Award Amount

Up to $3,100,000 has been allocated for the initial award budget period. Commensurate financial support for the remaining two project budget periods will be determined by the performance of the grantee program development needs as determined by the Administrator of OJJDP, and/or availability of funds.

Due Date

Applicants must submit the original, signed application (Standard Form 424) and two unbound copies to OJJDP. Application forms and supplementary information will be provided upon request for the Application Kit. Potential applicants should review the OJJDP Peer Review Guideline and the OJJDP Competition and Peer Review Procedures. These documents will be provided in the Application Kit.

Applications must be received by mail or delivered to the Office of Juvenile Justice and Delinquency Prevention by 5 p.m. e.s.t., 45 days from the date of the appearance of this solicitation in the **Federal Register**. Those applications sent by mail should be addressed to Robert O. Heck, Special Emphasis Division, room 752, 633 Indiana Avenue, NW., Washington, DC, 20531. Delivered applications must be taken to the address listed above between the hours of 8 a.m. and 5 p.m., except Saturdays, Sundays, or Federal holidays.

General Application and Administrative Requirements

Eligible Applicants

Applicants are invited from eligible agencies, institutions or individuals, public or private. Private-for-profit organizations are not eligible for special emphasis grants but may be for other grants upon a waiver of their fee.

Applicants must also demonstrate that they have the management and financial capability to implement effectively a project of this size and scope. Applicants must demonstrate that they have management capability in order to be eligible for funding consideration.

Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget and budget narrative. All applications must include the information required by the specific solicitation as well as the Standard Form 424.

Applications that include proposed non-competitive contracts for the provision of specific goods and services must include a sole source justification for any procurement in excess of $25,000.

Private, nonprofit applicants who have not previously received OJP funds are required to submit a copy of the Office of Justice Programs, Accounting System Financial Capability Questionnaire (OJP Form 7120/1) before a final award can be made.

Applicants who are receiving other funds in support of any of the proposed activities should list the names of the other organizations that are providing or will provide financial assistance to the program and indicate the amount of funds to be contributed during the program period. The applicant must provide the title of the project, the name of the public or private grantor, the amount to be contributed during this program period, and a brief description of the program.

OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding.

To comply with Executive Order 12373, applicants from State and local units of government or other organizations providing services within a State must submit a copy of their application to the State Single Point of Contact, if one exists, and if the program has been selected for review by the State.

Application Review Process

Applications will be initially screened to determine if the basic eligibility requirements have been met (e.g., an application must include a completed and signed Form 424, including a budget with narrative).

Applications will be reviewed by a panel of experts who will make recommendations to the Administrator. The panel will assign numerical values in rating competing applications based on the point distribution in the Selection Criteria for each specific program. Peer reviewers' recommendations are advisory only and the final award decision will be made by the Administrator. Those applications receiving a score of 55 or higher will be eligible for funding consideration, provided that necessary programmatic and budgetary revisions are successfully negotiated.

Evaluation

OJJDP requires that funded programs contain plans for continuous self-

assessment to keep program management informed of progress and results. Many funded projects will be considered for participation in independent evaluations initiated by OJJDP. Project management will be expected to cooperate fully with designated evaluators.

Financial Requirements

Discretionary grants are governed by the provisions of the Office of Management and Budget (OMB) Circulars applicable to financial assistance. Additional information is contained in the "Financial and Administrative Guide for Grants," Office of Justice Programs, Guideline Manual, M7100, available from the Office of Justice Programs. This guideline manual includes information on allowable costs, methods of payment, audit requirements, accounting systems and financial records.

Civil Rights Requirements

Section 809(c)(1) of the Omnibus Crime Control and Safe Streets Act (OCCSSA) of 1968, as amended, 42 U.S.C. 3789d(c)(1), applicable to OJJDP funded programs and projects under section 292(b) of the JJDP Act, 42 U.S.C. 5672(b), provides that no person in any State shall on the grounds of race, color, religion, national origin or sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under or denied employment in connection with any program or activity funded in whole or in part with funds made available under this title. Recipients of funds under the Act are also subject to the provisions of title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973, as amended; title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations 28 CFR part 42, subparts C, D, E and G. Upon request, applicants shall maintain such records and submit to OJJDP or OJP timely, complete and accurate information regarding their compliance with the foregoing statutory and regulatory requirements.

In the event a Federal or State court or a Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights (OCR) of the Office of Justice Programs.

Drug-Free Workplace

Title V, section 5153 of the Anti-Drug Abuse Act of 1988 provides that all grantees of Federal funds, other than an individual, shall certify to the granting agency that it will provide a drug-free workplace by:

- Publishing a statement notifying employees that the unlawful manufacturing, distribution, dispensation, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- Establishing a drug-free awareness program to inform employees about:

—The danger of drug abuse in the workplace;
—The grantee's policy of maintaining a drug-free workplace;
—Any available drug counseling, rehabilitation and employee assistance programs; and,
—The penalties that may be imposed upon employees for drug abuse violations.

- Making it a requirement that each employee to be engaged in the performance of such grant be given a copy of the statement of notification prohibiting controlled substances in the workplace.
- Notifying the employee that as a condition of employment in such grant, the employee will:

—Abide by the terms of the statement; and,
—Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.

- Notifying the granting agency within 10 days after receiving notice of a conviction from an employee or otherwise receiving actual notice of such conviction.
- Imposing a sanction on or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by an employee who is so convicted.
- Making a good faith effort to continue to maintain a drug-free workplace.

The U.S. Office of Management and Budget, in collaboration with other Federal executive agencies, including the Department of Justice, has developed regulations to implement the Drug-Free Workplace Act of 1988, 28 CFR part 67, subpart F.

Audit Requirement

In October 1984, Congress passed the Single Audit Act of 1984. On April 12, 1985, the Office of Management and Budget issued Circular A–128, "Audits of State and Local Governments," which establishes regulations to implement the Act. OMB Circular A–128, "Audits of State and Local Governments," outlines the requirements for organizational audits which apply to OJJDP grantees.

OMB Circular A–133 outlines the requirements for institutions of higher education, hospitals and other nonprofit organizations to have audits performed.

Governmentwide Debarment and Suspension (Nonprocurement)

This Subpart of 28 CFR part 67, provides that executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial and non-financial assistance and benefits. Debarment or suspension of a participant in a program by one Agency has governmentwide effect. It is the policy of the Federal Government to conduct business only with responsible persons, and these guidelines will assist agencies in carrying out this policy.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction (OJP Form 4061/1). All direct recipient grantees must complete an OJP Form 4061/1 prior to entering into a financial agreement with subrecipients. This requirement includes persons, corporations, etc. who have critical influence on or substantive control over the award. The direct recipient will be responsible for monitoring the submission and maintaining the official subrecipient certifications.

Certification Regarding Debarment, Suspension, Ineligibility and Other Responsibility Matters—Primary Covered Transactions (OJP Form 4061/2). Certifications must be completed and submitted by grantees of categorical awards to a grantor agency program officer during the application stage.

Disclosure of Lobbying Activities

Section 319 of Public Law 101–121 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. Section 319 also requires each person who requests or receives a Federal contract, grant, cooperative agreement, loan or a Federal commitment to insure or guarantee a loan, to disclose lobbying. The term "recipient," as used in this context, does not apply to any

Indian tribe or to a tribal or Indian organization.

A person who requests a Federal grant, cooperative agreement or contract exceeding $100,000 is required to file a written declaration with OJP. The declaration shall contain:

- A certification that addresses payment made or to be made with both Federal or non-Federal funds for influencing or attempting to influence persons in the making of Federal awards.
- "Disclosure of Lobbying Activities" must be submitted if payments were made with non-Federal funds and must contain the following information with respect to each payment and each agreement:

—Name and address of each person paid, to be paid or reasonably expected to be paid;
—Name and address of each individual performing the services for which payment is made, to be made or reasonably expected to be made; and
—The amount paid, how the person was paid and the activity for which the person was paid, is to be paid or is reasonably expected to be paid.

- Copies of certification and disclosure of lobbying activities, as outlined above, received from subgrantees contractors or subcontractors under a grant, cooperative agreement or contract for Federal subgrants exceeding $100,000.

A subgrantee, contractor or subcontractor under a grant, cooperative agreement or contract, who requests or receives Federal funds exceeding $100,000 is required to file a written declaration, as described above, with the person making the award.

A declaration must be filed at the end of each calendar quarter in which there occurs any event which materially affects ($25,000 or more) the accuracy of the information contained in any declaration previously filed for a grant, cooperative agreement, contract, subgrant or subcontract. These declarations shall be filed as follows:

- Grant, cooperative agreement and contract recipients shall send their amended declarations and copies of amended declarations for Federal subgrants to the Office of the Comptroller not later than 30 days after the end of each calendar quarter.
- Subgrantees, contractors or subcontractors under a grant, cooperative agreement or contract shall send their amended declarations each quarter to the person who made their subgrant.

Declarations are also required for extensions, continuations, renewals, amendments and modifications exceeding $100,000 or resulting in the award exceeding $100,000.

Disclosure of Federal Participation

Section 8136 of the Department of Defense Appropriations Act (Stevens Amendment), enacted in October 1988, requires that, "when issuing statements, press releases for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including but not limited to State and local governments, shall clearly state (1) the percentage of the total cost of the program or project which will be financed with Federal money, and (2) the dollar amount of Federal funds for the project or program."

Suspension or Termination of Funding

OJJDP may suspend, in whole or in part, or terminate funding for a grantee for failure to conform to the requirements or statutory objectives of the Act. Prior to suspension of a grant, OJJDP will provide reasonable notice to the grantee of its intent to suspend the grant and will attempt informally to resolve the problem resulting in the intended suspension. Hearing and appeal procedures for termination actions are set forth in the Department of Justice regulation at 28 CFR part 18.

Warren Kaufman,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

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federal register

Tuesday
October 22, 1991

Part XII

The President

Proclamation 6360—National Consumers Week, 1991

Executive Order 12777—Implementation of Section 311 of the Federal Water Pollution Control Act of October 18, 1972, as Amended, and the Oil Pollution Act of 1990

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The President

Proclamation 6360 of October 18, 1991

National Consumers Week, 1991

By the President of the United States of America

A Proclamation

For generations, our Nation's free enterprise system has provided consumers an unparalleled selection of high quality goods and services, as well as ample opportunities for earning, spending, and investing personal income. Now, as more and more countries around the world adopt market-oriented economies, thereby expanding global trade and commerce, consumers stand to benefit from an ever wider array of options.

Increasing competition in the marketplace spurs business and industry to improve both the quality and price of their products and services. This in turn enables consumers to get more out of their buying dollar. At the same time, the demand for greater innovation and productivity helps to create jobs.

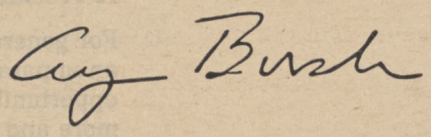
The theme for this year's observance of National Consumers Week, "Today's Choices—Tomorrow's Opportunities," underscores the importance of decisions made by individual consumers. What people buy, where, and how often helps to determine the shape of the marketplace, be it at the local or the international level. Here in the United States, we have traditionally relied on the ability of consumers and private industry to balance each other's needs and interests in the marketplace, with government intervening only to ensure fairness and the safety of goods and services. This system provides the flexibility that is essential to economic growth and technological progress.

However, while our options as consumers are virtually unlimited, our resources are not. Every American needs to recognize the importance of savings and investment, and all of us must decide carefully when spending our resources. To be responsible and discerning consumers, we must be knowledgeable about available goods and services. Every American must also be able to apply fundamental literacy skills to the day-to-day challenges of participating in our economy. The skills that one uses to compare products or to balance a checkbook are vital to success, not only in the marketplace, but also in the workplace. Our Nation's parents, educators, business leaders, and public officials share the responsibility for teaching these essential skills.

This year, as we mark the 10th anniversary of National Consumers Week, let us renew our determination to ensure that every American has the basic tools needed to exercise his or her rights as a consumer. Those rights include: the right to be free of unfair monopolies, which limit selection of products and services; the right to healthful and safe products; and the right to be heard when products do not meet acceptable standards. These rights are based on fundamental principles of freedom and fairness, and their preservation goes hand in hand with the success of our free enterprise system.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week beginning October 20, 1991, as National Consumers Week. I urge business owners, educators, public officials, consumer leaders, and members of the media to observe this week with appropriate activities that emphasize the important role consumers play in keeping our markets open, competitive, and fair. I also urge them to highlight the importance of education in helping citizens to become responsible consumers.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of October, 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 sixteenth.



[FR Doc. 91-25607
Filed 10-21-91; 10:51 am]
Billing code 3195-01-M

EXECUTIVE ORDER

12777

IMPLEMENTATION OF SECTION 311
OF THE FEDERAL WATER POLLUTION CONTROL ACT
OF OCTOBER 18, 1972, AS AMENDED,
AND THE OIL POLLUTION ACT OF 1990

By the authority vested in me as President by the Constitution and the laws of the United States of America, including Section 311 of the Federal Water Pollution Control Act, ("FWPCA") (33 U.S.C. 1321), as amended by the Oil Pollution Act of 1990 (Public Law 101-380) ("OPA"), and by Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

Section 1. National Contingency Plan Area Committees, and Area Contingency Plans. (a) Section 1 of Executive Order No. 12580 of January 23, 1987, is amended to read as follows:

"Section 1. National Contingency Plan. (a)(1) The National Contingency Plan ("the NCP"), shall provide for a National Response Team ("the NRT") composed of representatives of appropriate Federal departments and agencies for national planning and coordination of preparedness and response actions, and Regional Response Teams as the regional counterparts to the NRT for planning and coordination of regional preparedness and response actions.

"(2) The following agencies (in addition to other appropriate agencies) shall provide representatives to the National and Regional Response Teams to carry out their responsibilities under the NCP: Department of State, Department of Defense, Department of Justice, Department of the Interior, Department of Agriculture, Department of Commerce, Department of Labor, Department of Health and Human Services, Department of Transportation, Department of Energy, Environmental Protection Agency, Federal Emergency Management Agency, United States Coast Guard, and the Nuclear Regulatory Commission.

"(3) Except for periods of activation because of response action, the representative of the Environmental Protection Agency ("EPA") shall be the chairman, and the representative of the United States Coast Guard shall be the vice chairman, of the NRT and these agencies' representatives shall be co-chairs of the Regional Response Teams ("the RRTs"). When the NRT or an RRT is activated for a response action, the EPA representative shall be the chairman when the release or threatened release or discharge or threatened discharge occurs in the inland zone, and the United States Coast Guard representative shall be the chairman when the release or threatened release or discharge or threatened discharge occurs in the coastal zone, unless otherwise agreed upon by the EPA and the United States Coast Guard representatives (inland and coastal zones are defined in the NCP).

"(4) The RRTs may include representatives from State governments, local governments (as agreed upon by the States), and Indian tribal governments. Subject to the functions and authorities delegated to Executive departments and agencies in other sections of this order, the NRT shall provide policy and program direction to the RRTs.

"(b)(1) The responsibility for the revision of the NCP and all the other functions vested in the President by Sections 105(a), (b), (c), and (g), 125, and 301(f) of the Act, by Section 311(d)(1) of the Federal Water Pollution Control Act, and by Section 4201(c) of the Oil Pollution Act of 1990 is delegated to the Administrator of the Environmental Protection Agency ("the Administrator").

"(2) The function vested in the President by Section 118(p) of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499) ("SARA") is delegated to the Administrator.

"(c) In accord with Section 107(f)(2)(A) of the Act, Section 311(f)(5) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(f)(5)), and Section 1006(b)(1) and (2)

of the Oil Pollution Act of 1990, the following shall be among those designated in the NCP as Federal trustees for natural resources:

(1) Secretary of Defense;

(2) Secretary of the Interior;

(3) Secretary of Agriculture;

(4) Secretary of Commerce;

(5) Secretary of Energy.

In the event of a spill, the above named Federal trustees for natural resources shall designate one trustee to act as Lead Administrative Trustee, the duties of which shall be defined in the regulations promulgated pursuant to Section 1006(e)(1) of OPA. If there are natural resource trustees other than those designated above which are acting in the event of a spill, those other trustees may join with the Federal trustees to name a Lead Administrative Trustee which shall exercise the duties defined in the regulations promulgated pursuant to Section 1006(e)(1) of OPA.

"(d) Revisions to the NCP shall be made in consultation with members of the NRT prior to publication for notice and comment.

"(e) All revisions to the NCP, whether in proposed or final form, shall be subject to review and approval by the Director of the Office of Management and Budget ("OMB")."

(b) The functions vested in the President by Section 311(j)(4) of FWPCA, and Section 4202(b)(1) of OPA, respecting the designation of Areas, the appointment of Area Committee members, the requiring of information to be included in Area Contingency Plans, and the review and approval of Area Contingency Plans are delegated to the Administrator of the Environmental Protection Agency ("Administrator") for the inland zone and the Secretary of the Department in which the Coast Guard is operating for the coastal zone (inland and coastal zones are defined in the NCP).

Sec. 2. National Response System. (a) The functions vested in the President by Section 311(j)(1)(A) of FWPCA, respecting the establishment of methods and procedures for the removal of discharged oil and hazardous substances, and by Section 311(j)(1)(B) of FWPCA respecting the establishment of criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans, are delegated to the Administrator for the inland zone and the Secretary of the Department in which the Coast Guard is operating for the coastal zone.

(b)(1) The functions vested in the President by Section 311(j)(1)(C) of FWPCA, respecting the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from non-transportation-related onshore facilities, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(1)(C) of FWPCA, respecting the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from vessels and transportation-related onshore facilities and deepwater ports subject to the Deepwater Ports Act of 1974 ("DPA"), are delegated to the Secretary of Transportation.

(3) The functions vested in the President by Section 311(j)(1)(C) of FWPCA, respecting the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, are delegated to the Secretary of the Interior.

(c) The functions vested in the President by Section 311(j)(1)(D) of FWPCA, respecting the inspection of

vessels carrying cargoes of oil and hazardous substances and the inspection of such cargoes, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(d)(1) The functions vested in the President by Section 311(j)(5) of FWPCA and Section 4202(b)(4) of OPA, respecting the issuance of regulations requiring the owners or operators of non-transportation-related onshore facilities to prepare and submit response plans, the approval of means to ensure the availability of private personnel and equipment, the review and approval of such response plans, and the authorization of non-transportation-related onshore facilities to operate without approved response plans, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(5) of FWPCA and Section 4202(b)(4) of OPA, respecting the issuance of regulations requiring the owners or operators of tank vessels, transportation-related onshore facilities and deepwater ports subject to the DPA, to prepare and submit response plans, the approval of means to ensure the availability of private personnel and equipment, the review and approval of such response plans, and the authorization of tank vessels, transportation-related onshore facilities and deepwater ports subject to the DPA to operate without approved response plans, are delegated to the Secretary of Transportation.

(3) The functions vested in the President by Section 311(j)(5) of FWPCA and Section 4202(b)(4) of OPA, respecting the issuance of regulations requiring the owners or operators of offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, to prepare and submit response plans, the approval of means to ensure the availability of private personnel and equipment, the review and approval of such response plans, and the authorization of offshore facilities, including associated

pipelines, other than deepwater ports subject to the DPA, to operate without approved response plans, are delegated to the Secretary of the Interior.

(e)(1) The functions vested in the President by Section 311(j)(6)(A) of FWPCA, respecting the requirements for periodic inspections of containment booms and equipment used to remove discharges at non-transportation-related onshore facilities, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(6)(A) of FWPCA, respecting the requirements for periodic inspections of containment booms and equipment used to remove discharges on vessels, and at transportation-related onshore facilities and deepwater ports subject to the DPA, are delegated to the Secretary of Transportation.

(3) The functions vested in the President by Section 311(j)(6)(A) of FWPCA, respecting the requirements for periodic inspections of containment booms and equipment used to remove discharges at offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, are delegated to the Secretary of the Interior.

(f) The functions vested in the President by Section 311(j)(6)(B) of FWPCA, respecting requirements for vessels to carry appropriate removal equipment, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(g)(1) The functions vested in the President by Section 311(j)(7) of FWPCA, respecting periodic drills of removal capability under relevant response plans for onshore and offshore facilities located in the inland zone, and the publishing of annual reports on those drills, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(7) of FWPCA, respecting periodic drills of

removal capability under relevant response plans for tank vessels, and for onshore and offshore facilities located in the coastal zone, and the publishing of annual reports on those drills, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(h) No provision of Section 2 of this order, including, but not limited to, any delegation or assignment of any function hereunder, shall in any way affect, or be construed or interpreted to affect the authority of any Department or agency, or the head of any Department or agency under any provision of law other than Section 311(j) of FWPCA or Section 4202(b)(4) of OPA.

(i) The functions vested in the President by Section 311(j) of FWPCA or Section 4202(b)(4) of OPA which have been delegated or assigned by Section 2 of this order may be redelegated to the head of any Executive department or agency with his or her consent.

Sec. 3. Removal. The functions vested in the President by Section 311(c) of FWPCA and Section 1011 of OPA, respecting an effective and immediate removal or arrangement for removal of a discharge and mitigation or prevention of a substantial threat of a discharge of oil or a hazardous substance, the direction and monitoring of all Federal, State and private actions, the removal and destruction of a vessel, the issuance of directions, consulting with affected trustees, and removal completion determinations, are delegated to the Administrator for the inland zone and to the Secretary of the Department in which the Coast Guard is operating for the coastal zone.

Sec. 4. Liability Limit Adjustment. (a) The functions vested in the President by Section 1004(d) of OPA, respecting the establishment of limits of liability, with respect to classes or categories of non-transportation-related onshore facilities, the reporting to Congress on the desirability

of adjusting limits of liability with respect to non-transportation-related onshore facilities, and the adjustment of limits of liability to reflect significant increases in the Consumer Price Index with respect to non-transportation-related onshore facilities, are delegated to the Administrator, acting in consultation with the Secretary of Transportation, the Secretary of Energy, and the Attorney General.

(b) The functions vested in the President by Section 1004(d) of OPA, respecting the establishment of limits of liability, with respect to classes or categories of transportation-related onshore facilities, the reporting to Congress on the desirability of adjusting limits of liability, with respect to vessels or transportation-related onshore facilities and deepwater ports subject to the DPA, and the adjustment of limits of liability to reflect significant increases in the Consumer Price Index with respect to vessels or transportation-related onshore facilities and deepwater ports subject to the DPA, are delegated to the Secretary of Transportation.

(c) The functions vested in the President by Section 1004(d) of OPA, respecting the reporting to Congress on the desirability of adjusting limits of liability with respect to offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, and the adjustment of limits of liability to reflect significant increases in the Consumer Price Index with respect to offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, are delegated to the Secretary of the Interior.

Sec. 5. Financial Responsibility. (a)(1) The functions vested in the President by Section 1016(e) of OPA, respecting (in the case of offshore facilities other than deepwater ports)

the issuance of regulations concerning financial responsibility, the determination of acceptable methods of financial responsibility, and the specification of necessary or unacceptable terms, conditions, or defenses, are delegated to the Secretary of the Interior.

(2) The functions vested in the President by Section 1016(e) of OPA, respecting (in the case of deepwater ports) the issuance of regulations concerning financial responsibility, the determination of acceptable methods of financial responsibility, and the specification of necessary or unacceptable terms, conditions, or defenses, are delegated to the Secretary of Transportation.

(b)(1) The functions vested in the President by Section 4303 of OPA, respecting (in cases involving vessels) the assessment of civil penalties, the compromising, modification or remission, with or without condition, and the referral for collection of such imposed penalties, and requests to the Attorney General to secure necessary judicial relief, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(2) The functions vested in the President by Section 4303 of OPA, respecting (in cases involving offshore facilities other than deepwater ports) the assessment of civil penalties, the compromising, modification or remission, with or without condition, and the referral for collection of such imposed penalties, and requests to the Attorney General to secure necessary judicial relief, are delegated to the Secretary of the Interior.

(3) The functions vested in the President by Section 4303 of OPA, respecting (in cases involving deepwater ports) the assessment of civil penalties, the compromising, modification or remission, with or without condition, and the referral for collection of such imposed penalties, and requests to the Attorney General to secure necessary judicial relief, are delegated to the Secretary of Transportation.

Sec. 6. Enforcement. (a) The functions vested in the President by Section 311(m)(1) of FWPCA, respecting the enforcement of Section 311 with respect to vessels, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(b) The functions vested in the President by Section 311(e) of FWPCA, respecting determinations of imminent and substantial threat, requesting the Attorney General to secure judicial relief, and other action including issuing administrative orders, are delegated to the Administrator for the inland zone and to the Secretary of the Department in which the Coast Guard is operating for the coastal zone.

Sec. 7. Management of the Oil Spill Liability Trust Fund and Claims. (a)(1)(A) The functions vested in the President by Section 1012(a)(1), (3), and (4) of OPA respecting payment of removal costs and claims and determining consistency with the National Contingency Plan (NCP) are delegated to the Secretary of the Department in which the Coast Guard is operating.

(B) The functions vested in the President by Section 6002(b) of the OPA respecting making amounts, not to exceed $50,000,000 and subject to normal budget controls, in any fiscal year, available from the Fund (i) to carry out Section 311(c) of FWPCA, and (ii) to initiate the assessment of natural resources damages required under Section 1006 of OPA are delegated to the Secretary of the Department in which the Coast Guard is operating. Such Secretary shall make amounts available from the Fund to initiate the assessment of natural resources damages exclusively to the Federal trustees designated in the NCP. Such Federal trustees shall allocate such amounts among all trustees required to assess natural resources damages under Section 1006 of OPA.

(2) The functions vested in the President by Section 1012(a)(2) of OPA, respecting the payment of costs and determining consistency with the NCP, are delegated to the Federal trustees designated in the NCP.

(3) The functions vested in the President by Section 1012(a)(5) of OPA, respecting the payment of costs and expenses of departments and agencies having responsibility for the implementation, administration, and enforcement of the Oil Pollution Act of 1990 and subsections (b), (c), (d), (j) and (l) of Section 311 of FWPCA, are delegated to each head of such department and agency.

(b) The functions vested in the President by Section 1012(c) of OPA, respecting designation of Federal officials who may obligate money, are delegated to each head of the departments and agencies to whom functions have been delegated under section 7(a) of this order for the purpose of carrying out such functions.

(c)(1) The functions vested in the President by Section 1012(d) and (e) of OPA, respecting the obligation of the Trust Fund on the request of a Governor or pursuant to an agreement with a State, entrance into agreements with States, agreement upon terms and conditions, and the promulgation of regulations concerning such obligation and entrance into such agreement, are delegated to the Secretary of the Department in which the Coast Guard is operating, in consultation with the Administrator.

(2) The functions vested in the President by Section 1013(e) of OPA, respecting the promulgation and amendment of regulations for the presentation, filing, processing, settlement, and adjudication of claims under OPA against the Trust Fund, are delegated to the Secretary of the Department in which the Coast Guard is operating, in consultation with the Attorney General.

(3) The functions vested in the President by Section 1012(a) of OPA, respecting the payment of costs,

damages, and claims, delegated herein to the Secretary of the Department in which the Coast Guard is operating, include, inter alia, the authority to process, settle, and administratively adjudicate such costs, damages, and claims, regardless of amount.

(d)(1) The Coast Guard is designated the "appropriate agency" for the purpose of receiving the notice of discharge of oil or hazardous substances required by Section 311(b)(5) of FWPCA, and the Secretary of the Department in which the Coast Guard is operating is authorized to issue regulations implementing this designation.

(2) The functions vested in the President by Section 1014 of OPA, respecting designation of sources of discharges or threats, notification to responsible parties, promulgation of regulations respecting advertisements, the advertisement of designation, and notification of claims procedures, are delegated to the Secretary of the Department in which the Coast Guard is operating.

Sec. 8. Miscellaneous. (a) The functions vested in the President by Section 311(b)(3) and (4) of FWPCA, as amended by the Oil Pollution Act of 1990, respecting the determination of quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare or the environment and the determinations of quantities, time, locations, circumstances, or conditions, which are not harmful, are delegated to the Administrator.

(b) The functions vested in the President by Section 311(d)(2)(G) of FWPCA, respecting schedules of dispersant, chemical, and other spill mitigating devices or substances, are delegated to the Administrator.

(c) The functions vested in the President by Section 1006(b)(3) and (4) of OPA respecting the receipt of designations of State and Indian tribe trustees for natural resources are delegated to the Administrator.

(d) The function vested in the President by Section 3004 of OPA, with respect to encouraging the development of an international inventory of equipment and personnel, is delegated to the Secretary of the Department in which the Coast Guard is operating, in consultation with the Secretary of State.

(e) The functions vested in the President by Section 4113 of OPA, respecting a study on the use of liners or other secondary means of containment for onshore facilities, and the implementation of the recommendations of the study, are delegated to the Administrator.

(f) The function vested in the President by Section 5002(c)(2)(D) of OPA, respecting the designating of an employee of the Federal Government who shall represent the Federal Government on the Oil Terminal Facilities and Oil Tanker Operations Associations, is delegated to the Secretary of Transportation.

(g) The functions vested in the President by Section 5002(o) of OPA, respecting the annual certification of alternative voluntary advisory groups, are delegated to the Secretary of Transportation.

(h) The function vested in the President by Section 7001(a)(3) of OPA, respecting the appointment of Federal agencies to membership on the Interagency Coordinating Committee on Oil Pollution Research, is delegated to the Secretary of Transportation.

(i) Executive Order No. 11735 of August 3, 1973, Executive Order No. 12123 of February 26, 1979, Executive Order No. 12418 of May 5, 1983 and the memorandum of August 24, 1990, delegating certain authorities of the President under the Oil Pollution Act of 1990 are revoked.

Sec. 9. Consultation. Authorities and functions delegated or assigned by this order shall be exercised subject to consultation with the Secretaries of departments and the heads

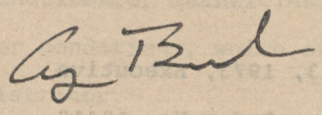
of agencies with statutory responsibilities which may be significantly affected, including, but not limited to, the Department of Justice.

Sec. 10. Litigation. (a) Notwithstanding any other provision of this order, any representation pursuant to or under this order in any judicial proceedings shall be by or through the Attorney General. The conduct and control of all litigation arising under the Oil Pollution Act of 1990 shall be the responsibility of the Attorney General.

(b) Notwithstanding any other provision of this order, the authority under the Oil Pollution Act of 1990 to require the Attorney General to commence litigation is retained by the President.

(c) Notwithstanding any other provision of this order, the Secretaries of the Departments of Transportation, Commerce, Interior, Agriculture, and/or the Administrator of the Environmental Protection Agency may request that the Attorney General commence litigation under the Oil Pollution Act of 1990.

(d) The Attorney General, in his discretion, is authorized to require that, with respect to a particular oil spill, an agency refrain from taking administrative enforcement action without first consulting with the Attorney General.



THE WHITE HOUSE,

October 18, 1991.

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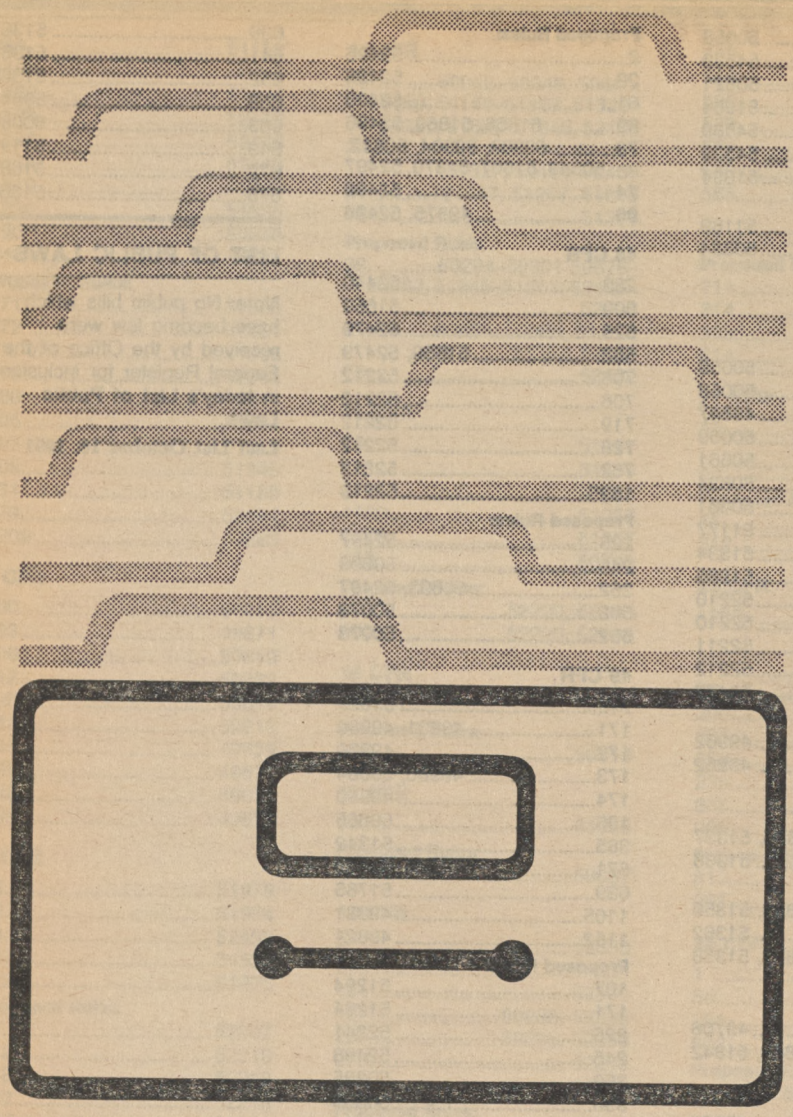
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in the Code of Federal Regulations (CFR)

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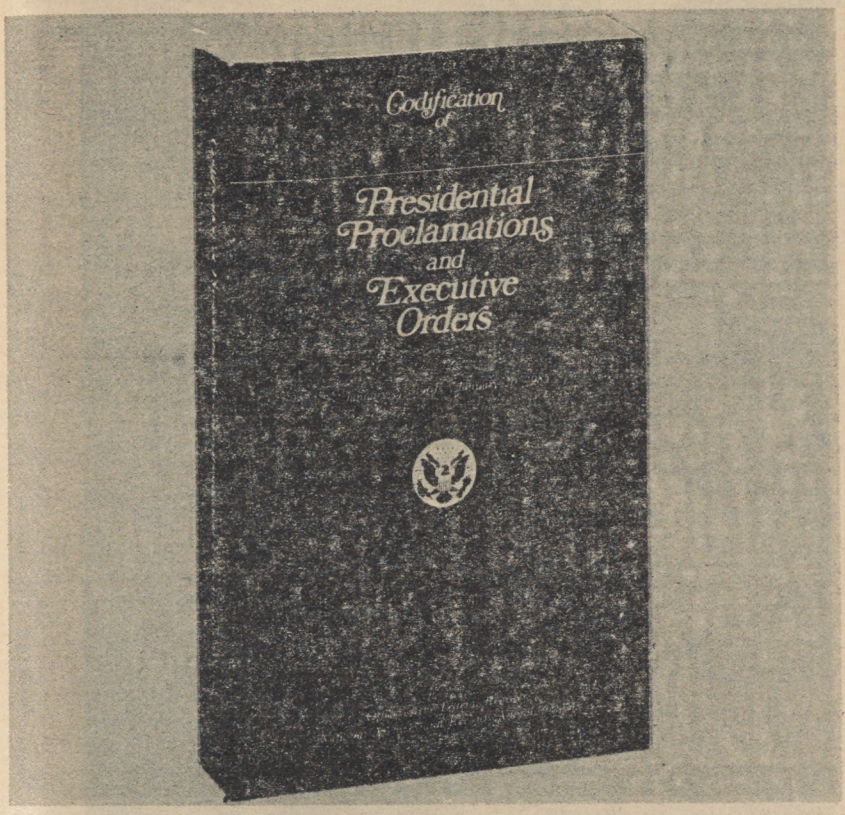
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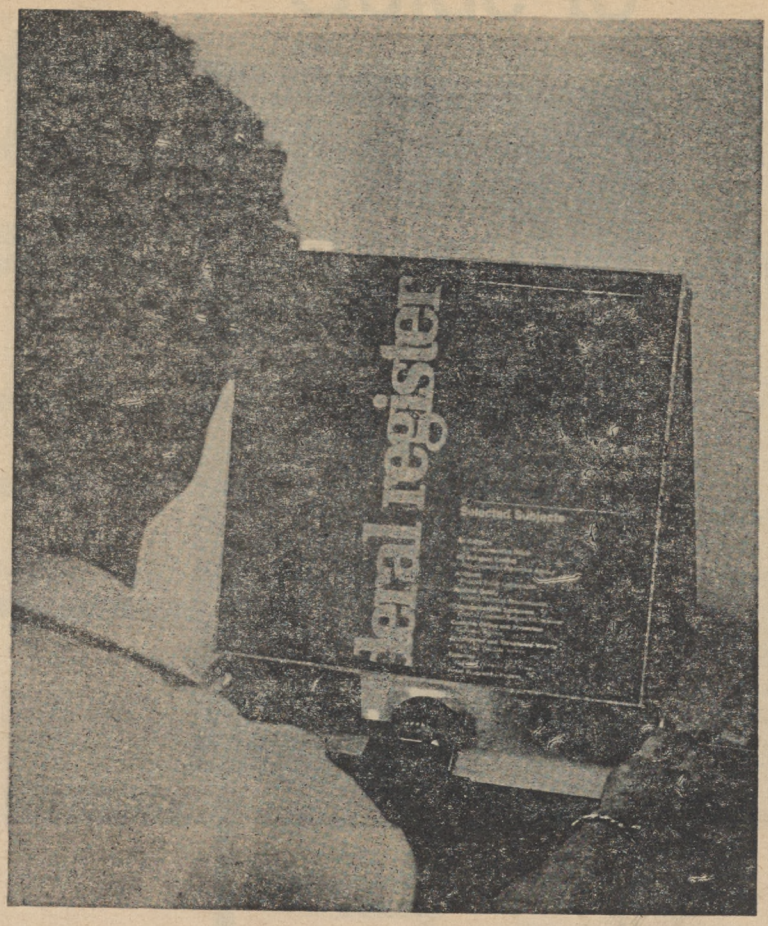
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