5-11-92
Vol. 57 No. 91

federal register

Monday
May 11, 1992

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

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

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

5-11-92
Vol. 57 No. 91
Pages 20025-20190

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: June 4, at 9:00 a.m.
WHERE: Office of the Federal Register.
First Floor Conference Room.
1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.
DIRECTIONS: North on 11th Street from Metro Center to corner of 11th and L Streets

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WHEN: May 27, at 9:00 a.m.
WHERE: Room 419
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495 Summer Street
Boston, MA
RESERVATIONS: Call the Federal Information Center, 1–800–347–1997

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WHEN: June 16; 9:00 a.m.
WHERE: Room 328
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Chicago, IL
RESERVATIONS: Call the Federal Information Center, 1–800–366–2998

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 92–24 of April 27, 1992

Determination and Certification To Permit U.S. Contributions to the International Fund for Ireland and Northern Ireland

Memorandum for the Secretary of State

Pursuant to section 5(c) of the Anglo-Irish Agreement Support Act of 1986 (Public Law 99–415), I hereby determine and certify that: (1) the Board of the International Fund established by the Anglo-Irish Agreement is, as a whole, broadly representative of the interests of the communities in Ireland and Northern Ireland; and (2) disbursements from the International Fund (a) will be distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation; and (b) will address the needs of both communities in Northern Ireland.

You are authorized and directed to transmit this determination and certification to the Congress, together with the Memorandum of Explanation, and to publish it in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, April 27, 1992.

Billing code 3195–01–M

THE SECRETARY OF STATE

WASHINGTON

March 12, 1992

MEMORANDUM FOR: THE PRESIDENT

FROM: James A. Baker, III

SUBJECT: Certification to Permit U.S. Contributions to the International Fund for Ireland

The Anglo-Irish Agreement Support Act of 1986, P.L. 99-415 ("the Act"), authorizes United States contributions to the International Fund for Ireland ("the Fund") established pursuant to the November 15, 1985, agreement between the United Kingdom and Ireland. The Act established the U.S. contribution as $120 million to be disbursed during fiscal years 1986, 1987, and 1988. Congress earmarked an additional $10 million for FY 1989, and $20 million each for FY 1990 and FY 1991.

U.S. contributions may be used only to "support and promote economic and social reconstruction and development" in Ireland and Northern Ireland. Section 5(c) requires that each fiscal year, prior to the U.S. contribution, the President certify to the Congress that he is satisfied the following conditions have been met: (1) the Board of Directors of the Fund, as a whole, is broadly representative of the interests of the communities in Ireland and Northern Ireland; and (2) disbursements from the Fund (a) will be distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation; and (b) will address the needs of both communities in Northern Ireland. Each certification must include a detailed explanation of the basis for the President's decision.

Satisfaction of Conditions for Certification

The present composition of the Board of Directors of the Fund, the arrangements for disbursement of its resources, and experience to date in approving projects satisfy the conditions set forth in Section 5(c).

(1) **Composition of the Board**

The method by which the Board is selected assures that it is broadly representative of the interests of the communities of Ireland and Northern Ireland, as required by Section 5(c)(1). The Board of Directors of the Fund consists of seven representatives; a chairman and three members each from Ireland and Northern Ireland. Pursuant to the Anglo-Irish Agreement, members are appointed jointly by the U.K. and Irish governments. In addition, the residences of the members are dispersed over a variety of geographic areas in Ireland and Northern Ireland.

(2) **Equitable Principles of Disbursements**

By its charter, the Fund is required to make disbursements "consistent with the economic and social policies of the respective governments." To that end, the guidelines the Fund has established for awards are specifically made subject to legislation governing Northern Ireland. The legislation prohibits employment discrimination on the grounds of religious belief or political opinion.

In addition, equal representation of Northern Ireland and Ireland officials and the cross-community participation within all of the management units of the Fund ensure resources are disbursed in accordance with the principle of "nondiscrimination and equality of opportunity in employment without regard to religious affiliation" (Section 5(c)(2)(A) of the Anglo-Irish Support Act). Criteria by which to implement this principle are clearly spelled out and are built into the well defined project appraisal and approval system, and the monitoring and evaluation systems. All grantees are required to sign a pledge, using the exact words employed by the U.S. Congress, that any money allocated be used in a nondiscriminatory manner.

The Fund's systems and criteria also ensure that awards "will address the needs of both communities in Northern Ireland" (Section 5(c)(2)(B) of the "Anglo-Irish Support Act"). The Fund's charter establishes employment generation and investment promotion in both communities as top funding priorities. The Fund solicits and approves proposals consistent with its employment generation and investment objectives, from a broad cross-section of private groups, investors, and individual citizens from both communities.

Finally, the geographic distribution of projects approved throughout Ireland and Northern Ireland demonstrates that the needs of both religious communities are being met.

A detailed statement of the basis on which the Fund disburses resources, and its effectiveness in reaching both communities is contained in the attached Memorandum of Explanation.

MEMORANDUM OF EXPLANATION FOR CERTIFICATION
U.S. CONTRIBUTION TO THE
INTERNATIONAL FUND FOR IRELAND

I. INTRODUCTION

This report has been prepared to comply with legislative requirements associated with the Anglo-Irish Agreement Support Act of 1986, Public Law 99-415 ("the Act").

Section 5(c) of the Act requires that each fiscal year, prior to contributions to the International Fund for Ireland, the President certify to the Congress that he is satisfied the following conditions have been met:

A.) The Board of Directors of the International Fund, as a whole, is broadly representative of the interests of the communities of Ireland and Northern Ireland;

B.) Disbursements from the International Fund:

1) will be distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation, and

2) will address the needs of both communities in Northern Ireland.

II. BACKGROUND

A. Establishment and Operation of the Fund

The International Fund for Ireland ("the Fund") was formally established as an independent entity on December 12, 1986, in keeping with the provisions of the Anglo-Irish Agreement of November 15, 1985. The overall objectives of the Fund are to promote economic and social advancement and to encourage contact, dialogue, and reconciliation between nationalists and unionists throughout Ireland and Northern Ireland. The Anglo-Irish Agreement states that the Fund shall accomplish these objectives by stimulating private investment and encouraging voluntary efforts with special emphasis on projects promoting communal reconciliation. The Agreement also stipulated the establishment of two investment companies under the Fund.

The Fund is an independent entity which is administered by a Board of Directors appointed jointly by the British and Irish governments. The Board is guided by a Joint Advisory Committee consisting of senior civil servants drawn equally from Northern Ireland and Ireland. The Advisory Committee's principal role is to advise the Board on the economic and social policies and priorities of the two governments and to maximize the impact of

assistance by avoiding duplication of activity. The Board is supported by a Secretariat composed of administrators from the two jurisdictions. The Secretariat is headed by two Joint Director Generals, one from each side. The Fund's operating expenses are paid by the British and Irish governments.

The Fund's activities are executed primarily through program teams in the following areas: Business Enterprise, Tourism, Urban Development, Agriculture and Fisheries, Science and Technology, and the Wider Horizons Program. These program teams are composed of an equal number of representatives from Northern Ireland and Ireland. The teams are administered by joint-chairmen who keep the Board of Directors apprised of their respective program teams' activities.

In an effort to focus on the more disadvantaged areas, the Fund directs more than half of the resources available in the program sectors to disadvantaged areas in Northern Ireland. The Fund also created three additional program schemes: Community Economic Regeneration, which focuses community driven regeneration of economic activity in urban areas; Community Relations, designed to promote reconciliation; and Disadvantaged Areas Special Projects.

In addition to the above activities, the Board has recently begun implementing the Community Regeneration and Improvement Special Programme (CRISP). The program is designated for disadvantaged areas in Northern Ireland and focuses the Fund's resources on smaller towns and villages by linking a series of projects from the various program areas together. This way, the Fund is able to guarantee maximum value for its money and present a more comprehensive and dynamic development scheme.

B. Fund Contributions

The Fund receives contributions directly from bilateral and multilateral donors. The U.S. contribution thus far totals $130 million, including $10 million in FY 1989. Under the Foreign Operations, Export Financing, and Related Programs Appropriations Act, Congress appropriated an additional $20 million for FY 1990. A separate appropriation in FY 1991 provides yet another $20 million. The European Community disbursed 15 million European Currency Units (US$20 million) per year to the Fund for the years 1989, 1990 and 1991. New Zealand contributed NZ$300,000 in FY 1990 and Canada has pledged Can$10 million.

Each donor is entitled to appoint a representative to attend all Board meetings as a non-voting observer. Observers receive all Board papers and provide guidance to the Fund on behalf of their respective donor countries. The Honorable Eugene J. McCaffrey, Sr. was appointed U.S. Observer to the International Fund for Ireland in April 1990. Mary Barden Keegan serves as the alternate U.S. Observer.

C. Program Implementation

As of October of 1990, the Fund has approved a total of 1,523 projects and allocated over $266 million, including amounts leveraged through government agencies and the private sector, to its various program areas (compared to $174 million the previous year). Some $180 million has been committed to approved projects within the various programs. The Fund has disbursed approximately $150 million to ongoing and completed projects, including $26 million to the two investment companies.

Individual project applications continue to represent a majority of the projects for funding. However, the program teams are assisting various communities in identifying and preparing proposals through regular contact and consultation with a number of area Economic Development Consultants. The Consultants serve as a point of contact for local communities, provide valuable technical assistance and advice, and help to speed program implementation.

D. Job Creation and Additional Investment

Two elements identified as priorities of the U.S. Government in its contribution to the Fund are job creation and the leveraging of additional investment into the economy. Both elements have been adopted by the Fund in the implementation of its program.

The Fund agrees that job creation is an essential factor in determining the allocation of Fund resources and clearly places an emphasis on the job creation potential of each project considered for funding. It is estimated that the Fund created 11,823 new jobs and more than 4,703 temporary jobs in the construction industry. While calculations of indirect employment are less exact, the Fund estimates that more than 4,600 temporary jobs have been created.

The Fund has also been successful in leveraging new investment. Of the $180 million of Fund resources committed to approved projects, another $180 million and $134 million of private and government resources, respectively, have been invested. Thus every dollar that the Fund has committed has resulted in an additional $1.74 committed from other sources.

For additional information on the historical background of the Fund and the development of its policies and programs, please refer to the International Fund for Ireland 1990 Annual Report.

III. PRESIDENTIAL CERTIFICATION ELEMENTS

Each fiscal year, prior to the United States making a contribution to the Fund, the President must certify that he is satisfied that the Fund has complied with the legislative requirements in the Act. The following discusses these elements.

A. Board Representation

The Board of Directors consists of seven members; three nominated by the British government, three nominated by the Irish government, and the Chairman. Board members are approved by both sides through consultations between the two governments. The Board, by design and agreement, is representative of the communities in both Northern Ireland and Ireland. It should be noted, however, that there are presently no women serving on the Board.

The Board meets once every two months, primarily to review policy and procedural issues and to approve or reject proposals forwarded by the program teams for consideration. In addition, each Board member is responsible for coordinating with specific program teams and is consulted on a regular basis.

The Board members are as follows:

Mr. John B. McGuckian, Chairman
Mr. Denis Calvert
Mr. John Craig
Mr. Paddy Duffy
Mr. Pat Kenny
Mr. Neil McCann
Mr. Willie McCarter

The Chairman is from Ballymena in County Antrim, Northern Ireland. Mr. McGuckian holds positions on various other public boards, including Chairman of the Board of the Northern Ireland Allied Irish Bank, Chairman of Ulster Television, and Pro-Chancellor of Queens University in Belfast. Mr. McGuckian is also a member of committees overseeing such organizations as Cooperation North and Northern Ireland Voluntary Trust.

As in the past, the present Board is noted for its professionalism and integrity in setting policy and approving projects. The Board has taken a proactive role in promoting the Fund throughout Northern Ireland and Ireland as well as internationally. In addition, the Board has recently made significant inroads to attract proposals from historically hardline organizations from both traditions, most notably the Apprentice Boys of Londonderry, in an effort to break down social and political barriers and promote reconciliation.

B. Disbursements From the International Fund

The Fund's structure and policy framework ensure that resources are distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation, and that these resources address the needs of both communities in Northern Ireland and the six border counties of the Republic of Ireland.

The board has developed its policies for disbursement of resources taking into account the terms of the Agreement under which it was established, the wishes of the donor countries, and the need to supplement the economic and social policies of the two governments. The Board structure and policy framework is manifest in the internal checks and balances in the Fund's appraisal, approval, and management systems. Also, the wide geographical distribution of approved projects enhances the Fund's efforts to meet the needs of both communities. There have been notable achievements by the Fund in the areas of job creation, leveraging of private investment, and reconciliation. In addition, the Fund has made concerted efforts to target the most disadvantaged areas through CRISP and other special programs as well as the through the work of the Development Consultants.

1. Distribution of disbursements in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation.

Structure of the Fund. Ireland and Northern Ireland are equally represented by members of the Fund's Board of Directors, Advisory Committee, Secretariat, and Program Teams. These individuals are highly respected for their professional competence, integrity, and commitment to the Fund's objectives. The Advisory Committee, as mentioned above, is composed of senior officials of both the British and Irish governments and provides guidance and support for the Board. The Secretariat staff maintains the day-to-day operations of the Fund and have been carefully selected for their administrative skills and judgement. The Program Teams are staffed with technical and administrative professionals who are committed to the Fund's operating principles of nondiscrimination. Review of the IFI portfolio of projects and visits to selected sites by Agency for International Development (A.I.D.) personnel has confirmed that the Fund has assembled a competent and professional staff who have cultivated and exercised sound project approval and management procedures.

Policy Framework. All Fund publications and solicitations for proposals clearly spell out the Fund's commitment to equality of opportunity and nondiscrimination. All successful applicants are required by the Board to agree to the following prior to receiving an award:

> "Acceptance of a grant or loan under this scheme will be deemed to signify the applicant's acceptance of the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation and that the applicant will be expected to use the money in accordance with this principle."

The letter of offer clearly states that any violation of this agreement will require immediate repayment of resources. To date, the Fund has not had to request repayment.

Equality of opportunity requirements are also enforced in Northern Ireland under the Fair Employment (Northern Ireland) Act of 1989. This Act makes employment discrimination on the grounds of religious belief or public opinion illegal. The Act is designed to eradicate job discrimination and ensure the active practice of fair employment opportunity throughout Northern Ireland.

Project Appraisal and Approval. The Fund has instituted a clear and systematic appraisal and approval system. Each Program Team has signed agreements with the Fund Secretariat which spell out the criteria upon which all applications are made. As mentioned above, the Program Teams consist of officials from various government agencies, both North and South, which, in close cooperation with the Secretariat, help to bring the programs to fruition. The Team members, chosen for their expertise in their particular sector, review each project based on its merit using standard economic and financial analysis tools, as well as criteria relevant to their technical field.

Projects must also be consistent with the economic and social policies and priorities of the British and Irish governments. Each government reserves the right to veto support for activities proposed which violate their stated policies. No resources are to be used, for example, to improve the standing of or to further the goals of any paramilitary organization, either directly or indirectly. The Fund, the British government, and the Irish government are, however, committed to supporting activities which contribute to viable, self-sustaining growth, prosperity, and stability. In addition, it is hoped that the projects will have a positive impact on increasing respect for human rights and fundamental freedoms for citizens of both traditions from Northern Ireland and the Republic.

Thus, within the Fund's policy guidelines and the established criteria for the evaluation and approval process, projects are accepted for funding, rejected, or forwarded to an appropriate government agency for possible support from existing government programs. Applications are processed in a timely and efficient manner, consistent with a proper and prudent review of projects. In addition, of course, a considerable responsibility rests with the individual promoters of projects who must take the lead in completing their share of the financial package and implementing the project to a stage where payment can be made.

Each decision to approve, disapprove, or forward a project to a government agency requires the recommendation of the relevant program team, the endorsement of the two Board members supervising the team, and the approval of the Fund Secretariat. Any projects which are controversial, raise policy issues, or exceed the program team's delegation of authority, are forwarded to the Board for consideration.

Equality of opportunity and nondiscrimination is the guiding principle under which the Fund operates. Projects are reviewed on merit alone, without regard to political or religious affiliations of the applicants. The cross-community composition of the Fund Board, the Secretariat, and the program teams ensures this principle.

2. Addressing the needs of both communities in Northern Ireland.

In order to comply with British law, the principles under which the Fund was established, and the U.S. Government priorities under which our contribution was made, religious affiliation is not a factor in the approval process. Fund officials are not aware of an applicants religion. It is generally known, however, which religious majority is predominant within a specific geographical area.

During the program review visit by A.I.D. in December of 1990, management officials, community leaders, grantees, and program implementors were asked to comment on the extent to which the needs of both communities were being met. All respondents believed that every effort was being made to strengthen the cross-community nature of the programs. Many spoke of how, through Fund activities, they were able to experience for the first time a working or recreational experience with people of the opposite tradition. Such liaisons have produced cross-community boards of directors (under such organizations as the enterprise centers), cross-community enterprise matchmaking, cross-border joint ventures (such as the Derry-Galway-Boston Trade Fair), and genuine friendships. The civil servants of both governments in laboring together on the Fund have also developed excellent working, as well as, personal relationships with their counterparts. Such interaction at all levels of government contributes to reconciliation through dialogue and cooperation. The nature and extent of joint participation and government coordination underscores the desire of both traditions to strive for economic prosperity and political stability for everyone.

As discussed above, the Fund has made a concerted effort to direct assistance to the more economically disadvantaged areas. Special programs, such as CRISP, have been developed toward this end. The work of the Development Consultants is unsurpassed in assisting the disadvantaged communities to develop ideas and proposals to help themselves through the Fund. The Consultants participate in establishing local groups, ensure cross-community participation whenever possible, and assist groups in creating viable projects. In many cases, however, the IFI merely serves as a catalyst for community initiatives that have been developing independently of the Fund. The Consultants are also instrumental in contributing to a greater overall understanding and positive perception of the Fund among the people of both communities.

IV. CONCLUSION

A review of Fund activities and a visit to Ireland and Northern Irealnd by an A.I.D. officer confirms that the Board of Directors has maintained policies and procedures designed to guarantee that both traditions benefit from Fund activities. The Board's operating principles ensure that project decisions are made on the basis of merit. In addition, it has been concluded that Fund resources are being distributed in a manner consistent with its mandate as stated above. All grantees are made aware of the principles of equality of opportunity and nondiscrimination in employment, stipulated by acceptance of any grant monies.

This report concludes that:

> The Board of Directors of the International Fund for Ireland, as a whole, is broadly representative of the interests of the communities in Ireland and Northern Ireland.
>
> Disbursements from the Fund are distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation, and address the needs of both communities in Northern Ireland.

Appendix I

PROJECTS APPROVED, PROGRAM ALLOCATIONS, COMMITMENTS, AND DISBURSEMENTS ($ Million)

Projects	Projects Approved	IFI Program Budget	Committed	Disbursed
Agriculture and Fisheries	454	$13,600	$ 6,520	$ 5,050
Wider Horizons	129	$15,930	$10,260	$10,360
Business Enterprise	213	$44,990	$33,950	$23,660
Tourism	242	$59,340	$40,980	$16,620
Urban Development	391	$34,290	$24,450	$10,180
Community Relations	13	$ 4,240	$ 1,800	$ 1,300
Disadvantaged Areas Initiative	21	$37,030	$16,860	$ 2,190
Special Projects	6	$ 1,600	$ 1,600	$ 340
Flagship Projects	2	$ 8,660	$ 8,660	$ 2,240
Science and Technology	30	$20,330	$ 8,880	$ 7,020
Sub-Total	**1,501**	**$240,010**	**$153,960**	**$78,960**
Investment Companies	22	$26,180	$26,180	$26,180
TOTAL	**1,523**	**$266,190**	**$180,140**	**$105,140**

Appendix II

ESTIMATED EMPLOYMENT GENERATED

Projects	Direct	Indirect	Construction (Man Years)	Total
Agriculture and Fisheries	380	119	30	529
Wider Horizons	-	-	-	-
Business Enterprise	4,556	1,487	806	6,849
Tourism	1,565	1,264	1,295	4,124
Urban Development	2,382	894	986	4,262
Community Relations	8	2	-	100
Disadvantaged Areas	1,570	470	529	2,569
Special Projects	334	100	69	503
Flagship Projects	290	87	921	1,298
Science and Technology	109	27	37	173
Sub-Total	**11,194**	**4,450**	**4,673**	**20,317**
Investment Companies	629	175	30	834
TOTAL	**11,823**	**4,625**	**4,703**	**21,151**

Appendix III

AMOUNT LEVERAGED ON APPROVED PROJECTS COMMITMENTS, AND DISBURSEMENTS ($ Million)

Projects	Private Sector	Government	IFI	Total
Agriculture and Fisheries	$ 8,430	* $ 2,590	$ 6,520	$ 17,540
Wider Horizons	$ 2,060	$ 5,490	$ 10,260	$ 17,810
Business Enterprise	$ 20,150	$ 40,020	$ 33,950	$ 94,120
Tourism	$ 78,630	$ 2,040	$ 40,980	$121,650
Urban Development	$ 49,440	$ 6,780	$ 24,450	$ 80,670
Community Relations	$ 3,440	$ 1,760	$ 1,800	$ 7,000
Disadvantaged Areas	$ 2,780	$ 21,910	$ 16,860	$ 41,550
Special Projects	$ 4,980	$ 2,040	$ 1,600	$ 8,620
Flagship Projects	$ 6,020	$ 41,035	$ 8,660	$ 56,030
Science and Technology	$ 3,970	$ 9,950	$ 8,880	$ 22,800
Sub-Total	**$179,900**	**$133,615**	**$153,960**	**$467,790**
Investment Companies	-	-	$ 26,180	$ 26,180
TOTAL	**$179,900**	**$133,615**	**$180,140**	**$493,970**

* An amount of $1.9 million has been included to take into account the current running costs of the Marine Research vessel funded by the Northern Ireland Department of Agriculture.

Appendix IV

GEOGRAPHICAL DISTRIBUTION OF IFI APPROVED PROJECTS

District Council	(North)
Ballymena	20
Ards	24
Belfast	58
Castlereagh	3
Lisburn	13
Down	42
North Down	21
Antrim	17
Carrickfergus	25
Larne	15
Newtonabbey	11
Coleraine	35
Balleymoney	17
Moyle	14
Cookstown	15
Banbridge	16
Craigavon	46
Armagh	47
Dungannon	56
Fermanagh	95
Londonderry	27
Limavady	18
Magherafelt	28
Newry & Mourne	66
Omagh	50
Strabane	37
Unallocated *	165
Sub-Total	**981**

County	(South)
Cavan	98
Donegal	91
Louth	58
Managhan	83
Sligo	76
Sub-Total	**480**
Joint Regional Programs	62
Sub-Total	**62**
TOTAL	**1,523**

[FR Doc. 92-11136
Filed 5-7-92; 3:19 pm]
Billing code 3195-01-C

Rules and Regulations

Federal Register
Vol. 57, No. 91
Monday, May 11, 1992

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 432 and 752

RIN 3206-AE96

Performance Based Reduction in Grade and Removal Actions; Adverse Actions

AGENCY: Office of Personnel Management.

ACTION: Interim rule with comments invited for consideration in final rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations under parts 432 and 752 to implement the Civil Service Due Process Amendments (the Act), Public Law 101-376, effective August 17, 1990, granting procedural and appeal rights to certain nonpreference eligible employees in the excepted service. The interim regulations clarify which employees the Act covers and which it does not. They also reflect the later enactment of a separate personnel system for employees of the Administrative Office of the United States Courts.

DATES: Effective date: May 11, 1992. Comments must be received on or before July 7, 1992.

ADDRESSES: Written comments may be sent or delivered to Marjorie A. Marks, Chief, Employee Relations Division, Office of Employee and Labor Relations, Office of Personnel Management, room 7412, 1900 E Street NW., Washington, DC 20415. The facsimile number is (202) 606-2613 or FTS 266-2613.

FOR FURTHER INFORMATION CONTACT: Sharon C. Snellings, on part 432; Cynthia L. Field, on part 752. They may be reached on (202) 606-2920 or FTS 266-2920.

SUPPLEMENTARY INFORMATION: The interim regulations amend the coverage statements in parts 432 (Performance Based Reduction in Grade and Removal Actions) and 752 (Adverse Actions) to reflect the procedural and appellate rights which the statute now provides for nonpreference eligible employees in the excepted service who meet certain conditions. These procedural and appellate rights differ in some respects from those provided to employees in the competitive service.

1. Part 752—Nonpreference Eligible Excepted Service Employee Coverage

To the two categories of employees already covered under adverse action protections (competitive service employees and preference eligible employees in the excepted service), the Act adds a third category: certain nonpreference eligible employees in the excepted service. Nonpreference eligible employees who have completed 2 years of current continuous service (in other than a temporary appointment limited to 2 years or less) in the same or similar positions in an executive agency have procedural and appeal rights under the Act. An executive agency is defined in 5 U.S.C. 105 as an executive department, a Government corporation, and an independent establishment.

As noted above, the Act extends coverage to nonpreference eligible excepted service employees who have completed 2 years of current continuous service in the same or similar positions in an executive agency under other than a temporary appointment limited to 2 years or less. Such employees are covered at the end of 2 years of qualifying service, whether or not their agencies require a "trial" period of any length.

For the purposes of determining the completion of the 2 years of service, employment in the competitive service, the excepted service, the Senior Executive Service, or in more than 1 agency during the period is counted as long as the service was current, continuous, in the same or similar positions in an executive agency, and not in a temporary appointment limited to 2 years or less.

2. Part 752—Excepted Service Employee Exclusions

a. Nonpreference Eligible Employees in Excepted Service Appointments Pending Conversion to the Competitive Service

These special types of appointments are made with the intent of converting the employee to an appointment in the competitive service and provide noncompetitive conversion eligibility if the employee has satisfied eligibility requirements. Those requirements include a demonstration of satisfactory performance or training, and constitute the "probationary or trial period" referred to in 5 U.S.C. 7511(a)(1)(C)(i). Employees under these appointments have no procedural or appeal rights, but gain such rights upon conversion to the competitive service. These special appointments include those made under the Presidential Management Intern Program, the Student Work-Study Program ("co-ops"), Veterans Readjustment Appointments (VRA), certain Schedule A appointments of the severely disabled, and others. (Note that OPM's guidance on the appointments of severely physically or mentally disabled employees points out that conversion is not mandatory, but states that "there should be substantial justification for not recommending conversion of an employee who meets the minimum service requirement and who has demonstrated successful job performance." See Federal Personnel Manual, chapter 306, subchapters 4 and 7.)

Agencies should note that there are certain excepted service appointments which allow for conversion to the competitive service, but where the intent of the excepted appointment is not to convert an employee noncompetitively. For example, agencies may hire readers, interpreters, or personal assistants under Schedule A (5 CFR 213.3102(ll)), and may convert the employee noncompetitively, under 5 CFR 315.711, to a competitive service appointment. However, the purpose of this and any other such appointments is not eventual conversion to the competitive service. Thus, once a nonpreference eligible

employee has served 2 years under this type of appointment, he or she has appeal rights.

b. Persons Who Serve at the Pleasure of the President, Employees in Confidential Positions, or Presidential Appointees

These include employees whose appointments are made by and with the advice and consent of the Senate. They also include employees whose positions are determined to be of a confidential, policy-determining, policy-making, or policy-advocating character. The positions may be determined to be in these categories by the President for positions the President has excluded from the competitive service or positions excluded by statute, by the head of the agency for statutorily excepted positions, or by OPM for positions it has excluded from the competitive service by regulation, i.e., Schedule C appointments.

C. Retirees Receiving Annuities From the Civil Service Retirement and Disability Fund or the Foreign Service Retirement and Disability Fund

Reemployed annuitants under both the Civil Service Retirement System (CSRS) and Federal Employees Retirement Systems (FERS) who receive annuities from the Civil Service Retirement and Disability Fund and members of the Foreign Service receiving annuities under the Foreign Service Retirement and Disability Fund are excluded from coverage.

d. National Guard Technicians

The Amendments provide that persons described in 5 U.S.C. 8337(h)(1) are excluded entirely from chapter 75, U.S. Code. These are technicians employed under 32 U.S.C. 709(a). They are hired and removed under their own procedures.

e. Foreign Service Members

Since the Foreign Service Act of 1980 provides procedural protections for these members through the mechanism of the Foreign Service Grievance Board, the Due Process Amendments exclude them from coverage of chapter 75.

f. Employees of the Central Intelligence Agency (CIA), the General Accounting Office (GAO), and the Veterans Health Services and Research Administration (VHSRA)

The Act shows these positions as excluded.

g. Nonpreference eligible Employees of the Postal Service, the Postal Rate Commission, the Panama Canal Commission, the Tennessee Valley Authority, the Federal Bureau of Investigation, the National Security Agency, the Defense Intelligence Agency, or any Intelligence Activity of a Military Department Covered under Section 1590 of Title 10

These employees continue to be excluded from procedural and appellate rights under 5 U.S.C. chapter 75.

h. Aliens and Noncitizens of the United States Who Occupy Positions Outside the United States

These positions are described in 5 U.S.C. 5102(c)(11). The Act makes clear their exclusion from the protections of chapters 43 and 75.

i. Other Employees Excluded From Appointing and Adverse Action Provisions of Title 5 by Virtue of Their Agencies' Statutory Provisions

As previously noted, the Act specifically lists certain agencies and groups of employees as excepted entirely from coverage under chapters 43 and 75. These agencies or groups of positions (e.g., the Foreign Service, CIA, and GAO) have always been excluded by their own separate statutes. In addition to agencies and positions specified as excluded by their own statutes, OPM is aware of other groups of positions which, under their respective statutes, are also excluded from various parts of title 5. Consequently, if a position was previously excluded by an agency's own statutory authority from chapters 43 and 75, it continues to be excluded.

3. Part 432—Coverage of Excepted Service Nonpreference Eligible Employees

The Act revises 5 U.S.C. 4303(e) to provide that nonpreference eligible employees in the excepted service with the requisite 2 years of service who are covered by subchapter II of 5 U.S.C. chapter 75 have the right to appeal to the Merit Systems Protection Board (MSPB) under 5 U.S.C. 7701. Thus, after 2 years of service, these employees now have the right to appeal a removal or reduction in grade taken under 5 U.S.C. chapter 43 to MSPB. They continue to be entitled to the procedural protections of 5 U.S.C. chapter 43 after 1 year.

OPM is deleting the reference to Noncareer Executive Assignment positions in part 432 because Executive Order 12748 of February 1, 1991, abolished the Executive Assignment System. These positions were at grades GS–16, 17, and 18, and incumbents of these positions were converted to Schedule C appointments under 5 CFR 319.103(c)(2)(ii).

4. Miscellaneous

OPM is amending subpart C of part 752, which contains the statutory requirements for all adverse actions other than suspensions of 14 days or less, to incorporate the current statutory language.

OPM is amending part 432 and subparts B and D of part 752 to show the new exclusion from title 5 of employees of the Administrative Office of Courts by the Administrative Office of the United States Courts Personnel Act of 1990, which established a separate personnel system for these employees.

Pursuant to section 553(d)(2) of title 5, United States Code, I find that good cause exists for issuing these regulations as interim and effective immediately, in order to implement provisions of the Due Process Amendments, the Administrative Office of the United States Courts Personnel Act, and Executive Order 12748, which are already in effect. No other changes to existing regulations have been made.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal employees.

List of Subjects in 5 CFR Parts 432 and 752

Administrative practice and procedure; Government employees.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending part 432 and part 752 of title 5 of the Code of Federal Regulations to read as follows:

PART 432—PERFORMANCE BASED REDUCTION IN GRADE AND REMOVAL ACTIONS

1. The authority citation for part 432 continues to read as follows:

Authority: 5 U.S.C. 4302a, 4303, and 4305.

2. In § 432.102, paragraph (c)(3) is revised; paragraph (c)(4) is removed; paragraph (c)(5) is redesignated as paragraph (c)(4); and paragraph (f)(12) is revised to read as follows:

§ 432.102 Coverage.

* * * * *

(c) * * *

(3) Independent establishments in the executive branch as described at 5 U.S.C. 104, except for a Government corporation; and

* * * * *

(f) * * *

(12) A technician in the National Guard described in 5 U.S.C. 8337(h)(1), employed under section 709(b) of title 32;

(13) An individual occupying a position in the excepted service for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12 month period; and

* * * * *

3. In § 432.108, paragraphs (a)(2) and (a)(3) are revised; and paragraph (a)(4) is added. Paragraphs (b)(1)(ii) and (b)(1)(iii) are revised; and paragraph (b)(1)(iv) is added, to read as follows:

§ 432.108 Appeal and grievance rights.

(a) * * *

(2) In the competitive service serving in an appointment which is not subject to a probationary or trial period, and has completed 1 year of current continuous employment in the same or similar position under other than a temporary appointment limited to 1 year or less;

(3) A preference eligible in the excepted service who has completed 1 year of current continuous employment in the same or similar position(s); or

(4) A nonpreference eligible in the excepted service who is covered by subparts C and D of part 752 of this chapter.

(b) * * *

(1) * * *

(ii) In the competitive service, serving in an appointment which is not subject to a probationary or trial period, and has completed 1 year of current continuous employment in the same or similar position under other than a temporary appointment limited to 1 year or less;

(iii) A preference eligible in the excepted service who has completed 1 year of current continuous employment in the same or similar position(s); or

(iv) A nonpreference eligible in the excepted service who is covered by subparts C and D of Part 752 of the chapter.

* * * * *

PART 752—ADVERSE ACTIONS

4. The authority citation for part 752 continues to read in part as follows:

Authority: 5 U.S.C. 7504 and 7514. * * *

5. In § 752.201, subpart B of part 752, paragraph (b)(6) is revised and paragraph (b)(7) is removed, to read as follows:

§ 752.201 Coverage.

* * * * *

(b) * * *

(6) An employee of the Government Printing Office.

* * * * *

6. In § 752.301, paragraphs (a)(1), (b), and (c) of statutory § 7511 are revised to read as follows:

§ 752.301 Principal statutory requirements.

* * * * *

§ 7511. Definitions; Application

(a) For the purpose of this subchapter—

(1) "employee" means—

(A) An individual in the competitive service—

(i) who is not serving a probationary or trial period under an initial appointment; or

(ii) who has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less;

(B) a preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar positions—

(i) in an executive agency; or

(ii) in the United States Postal Service or Postal Rate Commission; and

(C) an individual in the excepted service other than a preference eligible—

(i) who is not serving a probationary or trial period under an initial appointment pending conversion to the competitive service; or

(ii) who has completed 2 years of current continuous service in the same or similar positions in an executive agency under other than a temporary appointment limited to 2 years or less;

* * * * *

(b) This subchapter does not apply to an employee—

(1) whose appointment is made by and with the advice and consent of the Senate;

(2) whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by—

(A) the President for a position that the President has excepted from the competitive service;

(B) the Office of Personnel Management for a position that the Office has excepted from the competitive service; or

(C) the President or the head of an agency for a position excepted from the competitive service by statute;

(3) whose appointment is made by the President;

(4) who is receiving an annuity from the Civil Service Retirement and Disability Fund, or the Foreign Service Retirement and Disability Fund, based on the service of such employee;

(5) who is described in section 8337(h)(1), relating to technicians in the National Guard;

(6) who is a member of the Foreign Service, as described in section 103 of the Foreign Service Act of 1980;

(7) whose position is with the Central Intelligence Agency, the General Accounting Office, or the Veterans Health Services and Research Administration;

(8) whose position is within the United States Postal Service, the Postal Rate Commission, the Panama Canal Commission, the Tennessee Valley Authority, the Federal Bureau of Investigation, the National Security Agency, the Defense Intelligence Agency, or an intelligence activity of a military department covered under section 1590 of title 10, unless subsection (a)(1)(B) of this section or section 1005(a) of title 39 is the basis for this subchapter's applicability; or

(9) who is described in section 5102(c)(11) of this title.

(c) The Office may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulations of the Office which is not otherwise covered by this subchapter.

* * * * *

7. In § 752.401, paragraphs (c) and (d) are revised to read as follows:

§ 752.401 Coverage.

* * * * *

(c) *Employees covered.* This subpart covers:

(1) An employee in the competitive service who has completed a probationary or trial period;

(2) An employee in the competitive service serving in an appointment that requires no probationary or trial period, and who has completed 1 year of current continuous service in the same or similar positions under other than a temporary appointment limited to 1 year or less;

(3) An employee in the excepted service who is a preference eligible in an Executive agency as defined at 5 U.S.C. 105, the U.S. Postal Service, or the Postal Rate Commission and who has completed 1 year of current continuous service in the same or similar positions;

(4) A Postal Service employee covered by Public Law 100–90 who has completed 1 year of current continuous service in the same or similar positions and who is either a supervisory or management employee or an employee engaged in personnel work in other than a purely nonconfidential clerical capacity;

(5) An employee in the excepted service who is a nonpreference eligible in an Executive agency as defined at 5 U.S.C. 105 and who has completed 2 years of current continuous service in the same or similar positions under other than a temporary appointment limited to 2 years or less;

(6) An employee with competitive status who occupies a position is Schedule B of part 213 of this chapter;

(7) An employee who was in the competitive service at the time his or her position was first listed under Schedule A, B, or C of the excepted service and who still occupies that position; and

(8) An employee of the Government Printing Office.

(d) *Employees excluded.* This subpart does not apply to:

(1) An employee whose appointment is made by and with the advice and consent of the Senate;

(2) An employee whose position has been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character by: The President for a position that the President has excepted from the competitive service; the Office of Personnel Management for a position that the Office has excepted from the competitive service (Schedule C); or the President or the head of an agency for a position excepted from the competitive service by statute;

(3) A Presidential appointee;

(4) A reemployed annuitant;

(5) A technician in the National Guard described in 5 U.S.C. 8337(h)(1) who is employed under section 709(b) of title 32;

(6) A Foreign Service member as described in section 103 of the Foreign Service Act of 1980;

(7) An employee of the Central Intelligence Agency, the General Accounting Office, and the Veterans Health Services and Research Administration;

(8) A nonpreference eligible employee with the U.S. Postal Service, the Postal Rate Commission, the Panama Canal Commission, the Tennessee Valley Authority, the Federal Bureau of Investigation, the National Security Agency, the Defense Intelligence Agency, or an intelligence activity of a military department covered under section 1590 of title 10;

(9) An employee described in 5 U.S.C. 5102(c)(11) who is an alien or noncitizen occupying a position outside the United States;

(10) A nonpreference eligible employee serving a probationary or trial period under an initial appointment in the excepted service pending conversion to the competitive service; and

(11) An employee whose agency or position has otherwise been excluded from the appointing and adverse action provisions of title 5 by separate statutory provision.

[FR Doc. 92-10804 Filed 5-8-92; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-AWA-3]

Amendment to Manchester Airport Radar Service Area, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the description of the Manchester, NH, Airport Radar Service Area (ARSA). A final rule was published in the **Federal Register** on October 23, 1991, (56 FR 55028), that established the Manchester ARSA. This action clarifies the airspace to be excluded from the ARSA.

EFFECTIVE DATE: 0901 U.t.c., June 25, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

History

A final rule was published in the **Federal Register** on October 23, 1991 (56 FR 55028), with an effective date of December 12, 1991, that established the Manchester ARSA. The rule inadvertently failed to describe the ARSA airspace correctly. This action corrects that error. The airport radar service area listed in this document is published in section 71.501 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the description of the Manchester ARSA. This action clarifies the airspace to be excluded from the ARSA. Accordingly, since this action merely involves describing the ARSA correctly and does not involve a change in the actual dimensions, configuration, or operating requirements of airspace, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.501 Airport Radar Service Areas

* * * * *

Manchester Airport, NH [Revised]

That airspace extending upward from the surface to and including 4,300 feet MSL within a 5-mile radius of the Manchester Airport (lat. 42°56'00"N., long. 71°26'18"W.); including that airspace extending upward from 2,500 feet MSL to and including 4,300 feet MSL within a 10-mile radius of the airport; including that airspace from 1,500 feet MSL between a 5-mile radius and 10-mile radius south of the airport from Interstate 93 clockwise to the eastern edge of the 5-mile radius of Nashua Airport; including that airspace from 2,000 feet MSL between a 5-mile radius and 10-mile radius north of the airport from the Manchester VORTAC 315° radial clockwise to Interstate 93.

* * * * *

Issued in Washington, DC, on April 29, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-10907 Filed 5-8-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Alabama Regulatory Program; Regulatory Reform; Ownership and Control

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Alabama regulatory program (hereinafter referred to as the Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment includes changes to Alabama's regulations relating to ownership and control, and a variety of issues which were addressed in the proposed amendment submission of November 22, 1989, but which were not approved by OSM (56 FR 4542). The amendment is intended to make the State's regulations consistent with the revised Federal regulations contained in 30 CFR chapter VII.

EFFECTIVE DATE: May 11, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse Jackson, Jr., Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, suite 215, Birmingham, Alabama 35209. Telephone (205) 290-7282.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program

On May 20, 1992, the Secretary of the Interior conditionally approved the Alabama program. Information regarding general background on the Alabama program, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Alabama program can be found in the May 20, 1982, **Federal Register** (47 FR 22030). Actions taken subsequent to the conditional approval of the Alabama program are identified at 30 CFR 901.10 and 901.15.

II. Submission of Amendment

Pursuant to the Federal regulations at 30 CFR 732.17, OSM informed Alabama on May 11, 1989, that a number of the Alabama regulations relating to ownership and control were less effective than or inconsistent with the Federal regulations as revised on March 2, 1989 (54 FR 8982). On July 5, 1989, Alabama informally submitted proposed amendments to its program. The formal submittal was delayed until August 1, 1991 (Administrative Record No. A1-475), due to legal challenges to the Federal regulations and the pending review of the informal amendments. The August 1, 1991, formal submittal also addresses conditions that OSM placed on the February 5, 1991, approval of proposed amendments (56 FR 4552). The proposed amendment modifies the following Alabama Surface Mining and Reclamation Rules: 880-X-2A, 880-X-6A, 880-X-8D, 880-X-8G, 880-X-8K, 880-X-10C, 880X-10D, and 880-X-11C.

OSM announced receipt of the proposed amendment in the September 6, 1991, **Federal Register** (56 FR 44050) and in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on October 7, 1991.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Alabama program submitted on August 1, 1991.

A. Revisions to Alabama's Regulations That are Substantively Identical to the Corresponding Federal Regulations

State regulation	Subject	Federal counterpart
880-X-2A-.06	Definitions	30 CFR 701.5, 30 CFR 773.5
880-X-6A-.06 (a), (b), (c), (d), (e), (g), (h), (j), (k).	License Application.	30 CFR 778.13 (a), (b), (c)
880-X-8D-.05 (3), (4), (5), (6), (7).	Identification of Interest.	30 CFR 778.13 (b), (g), (h), (i)
880-X-8D-.06 (c), (d).	Compliance Information.	30 CFR 778.14 (c), (d)
880-X-8G-.05 (3), (4), (5), (6), (7).	Identification of Interest.	30 CFR 778.13 (b), (g), (h), (i)
880-X-8G-.06 (c), (d).	Compliance Information.	30 CFR 778.14 (c), (d)
880-X-8K-.10(2) (a), (b), (c), (3), (4), (5).	Permit Application Review.	30 CFR 773.15 (b), (c), (d), (e)
880-X-8K-.11	Permit Conditions.	30 CFR 773.17
880-X-8K-.17	Improvidently Issued Permits—General.	30 CFR 773.20
880-X-8K-.18	Improvidently Issued Permits—Rescission.	30 CFR 773.21
880-X-10C-.40	Coal Mine Waste.	30 CFR 816.83
880-X-10C-.45	Noncoal Mine Waste Disposal.	30 CFR 816.89
880-X-11C-.02	Cessation Orders.	30 CFR 843.11

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Alabama's proposed rules are no less effective than the Federal rules and he is removing the required amendments at 30 CFR 901.16(j)(2), (j)(3), and (j)(4).

At 880-X-8K-.10(2)(a), Alabama proposes, in part, that in the absence of a failure to abate cessation order, the State may presume that a notice of violation issued pursuant to the regulatory program or under a Federal or State program has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation. The proposed regulation is identical to the Federal regulation at 30 CFR 773.15(b)(1). However, the Secretary, in the matter of *National Wildlife Federation* v. *Lujan*, Civ. No. 88-3117 Consolidated, has expressed his intention to reconsider the issue of whether, in the absence of a failure to abate cessation order, the regulatory may presume that a notice of violation has been or is being corrected as set forth in the Federal rule.

Therefore, pending final resolution of the rulemaking currently being pursued by the Secretary regarding the Federal rule at 30 CFR 773.15(b)(1), action on that portion of proposed 880-X-8K-.10(2)(a) dealing with the presumption issue discussed above is being deferred by the Director.

B. Revisions to Alabama's Regulations That Are Not Substantively Identical to the Corresponding Federal Regulations

1. 880-X-8D-.05(8)/880-X-8G-.05(8)—Identification of Interests and 880-X-8D-.06(e)/880-X-8G-.06(e)—Compliance Information.

Alabama proposes to require that permit application information pertaining to identification of interests and violations be submitted in a format prescribed by the Alabama Surface

Mining Commission (ASMC) and, where applicable, OSM.

The Federal regulation at 30 CFR 778.13(j) requires that this information be submitted in any prescribed OSM format. In a letter dated January 22, 1992 (Administrative Record No. AL-481), Alabama states that the language "where applicable" is used because OSM has not prescribed a format for the submission of information pertaining to the identification of interests and violations. Alabama confirms, however, that the ASMC will require the submission of information in the OSM prescribed format in those cases where a format exists. The Director finds the proposed State regulations no less effective than the Federal regulation at 30 CFR 778.13(j).

2. 880-X-10C-.62(2)/880-X-10D-.56(2)—Revegetation

Alabama proposes as a standard for success that at least 80 percent of trees counted have been in place for at least three years. Alabama currently requires the trees to have been in place for three growing seasons. The Federal regulations at 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii) require that all trees and shrubs counted to determine revegetation success are in place for not less than two growing seasons and at the time of bond release, at least 80 percent of the trees and shrubs used to measure success have been in place for 60 percent of the applicable minimum period of responsibility. Alabama, in a letter to OSM dated January 22, 1992 (Administrative Record No. AL-481), defined a countable tree as one that has been in place for three years. The Director finds the proposed State regulations at 880-X-10C-.62(c)(iv) and 880-X-10D-.56(2)(c)(iv) no less effective than the Federal regulations at 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii) and he is removing the required amendment at 30 CFR 901.16(j)(4).

The Federal regulations at 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i) require that the regulatory authority specify planting and stocking arrangements after consultation with and approval by those State agencies responsible for the administration of forestry and wildlife programs. In a letter dated June 7, 1991, the State Forester provided Alabama with reforestation standards (Administrative Record No. AL-482). On February 18, 1992, OSM conducted a technical evaluation of Alabama's planting and stocking standards and found them to be acceptable. At subsections (e), Alabama proposes to require that the standards be reviewed and approved by the ASMC in consultation with the Alabama Department of Conservation and Natural Resources (ADCNR). Alabama, in a letter to OSM dated January 22, 1982 (Administrative Record No. AL-481), confirmed that the ADCNR must approve the State's reclamation plans for wildlife and recreation prior to implementation. The Director finds the proposed State regulations at 880-X-10C-.62(2)(c), (e) and 880-X-10D-.56(2)(c), (e) no less effective than the Federal regulations at 30 CFR 816.116(b)(3) (i) and (ii) and 817.116(b)(3) (i) and (ii) and he is removing the required amendment at 30 CFR 901.16(j)(2).

At subsections (e), Alabama also proposes to use the term "recreation" or wildlife habitat. The Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3) specify "fish and wildlife" habitat. In a letter to OSM dated January 22, 1992 (Administrative Record No. AL-481), Alabama explained that the provisions of subsections (e) are inapplicable to fish habitats. On February 18, 1992, OSM conducted a technical review of Alabama's proposed stocking requirements for recreation and wildlife habitats and found them to be reasonable.

In the same letter, Alabama confirmed that it will require that all woody species to be used to determine success and stocking for wildlife and recreation meet the same standards as those for forest land as required by the Federal regulations at 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii). The Director finds the State's proposed rules at 880-X-10C-.62(2)(e) and 880-X-10D-.56(2)(e) no less effective than the Federal regulations at 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii) and he is removing the required amendment at 30 CFR 901.16(j)(3).

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the September 6, 1991, **Federal Register** (56 FR 44050) ended on October 7, 1991. A public hearing was not held as no one requested an opportunity to provide testimony.

Two commenters expressed concern that Alabama's proposed regulations at sections 880-X-8K-.3(c)-(d) and 880-X-8K-.18 authorize the suspension or revocation of mining permits without an opportunity for a public hearing thereby violating the U.S. and Alabama Constitutions and the Alabama Administrative Procedure Act. The Director notes that 880-X-8K-.3(c)-(d) is not being amended and the comments pertaining to this section are therefore outside the scope of this rulemaking. The Director notes that 880-X-8K-.18 is substantively identical to and therefore no less effective than the Federal regulations at 30 CFR 773.21.

The Alabama Historical Commission commented that consultation with the State Historical Preservation Officer be required at section 880-X-8K-.10(2). The Director notes that 880-X-8K-.10(2) is substantively identical to and therefore no less effective than the Federal regulations at 30 CFR 773.15(b).

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Alabama program. The Department of Agriculture—Soil Conservation Service, the Department of the Interior—Bureau of Land Management, and the Department of Labor—Mine Safety and Health Administration, concurred without comment.

V. Director's Decision

Based on the above findings, the Director is approving the program amendment submitted by Alabama on August 1, 1991.

The Director is taking this opportunity to correct 30 CFR 901.15. The regulatory provisions not approved at (j)(2)(ii) and (j)(2)(viii) are removed based on a United States Court of Appeals decision in the matter of the *National Wildlife Federation* v. *Lujan*, Civ. No. 90-5114, March 22, 1991. The appeals court decision reversed an earlier district court decision remanding the language of 30 CFR 817.121(c)(2) (D.D.C. February 12, 1990, Cir. No. 87-01814). An operator is required to correct material damage to structures from subsidence only to the extent required by State law. On November 22, 1989, Alabama submitted proposed amendments to sections 880-X-8I-.10 and 880-X-10D-.58 requiring an operator to correct material damage only to the extent required by State law (Administrative Record No. AL-446). Because the State's proposals are substantively identical to the reinstated Federal regulation at 30 CFR 817.121(c)(2), the Director finds them no less effective than the Federal regulation.

The regulatory provision concerning termination of jurisdiction not approved at (1)(4) is also removed based on a United States Court of Appeals decision in the matter of the *National Wildlife Federation* v. *Lujan*, Civ. Nos. 90-5352, *et al* consolidated, December 10, 1991.

The appeals court decision reversed an earlier district court decision suspending the provisions of 30 CFR 700.11(d) (D.D.C., November 17, 1988, Civ. No. 88-3345). A regulatory authority may terminate its jurisdiction over the reclaimed site of a completed surface coal mining and reclamation operation when certain conditions are met. On July 16, 1990, Alabama submitted a proposed amendment to section 880-X-2A-.07(3)(a)&(b) authorizing the termination of jurisdiction (Administrative Record No. AL-462). Because the State's proposal is substantively identical to the reinstated Federal regulation at 30 CFR 700.11(d), the Director finds it no less effective than the Federal regulation.

The Director is also taking this opportunity to correct 30 CFR 901.16. The required amendments at paragraphs (a), (c), (d), (e), (f), (h), (i), (j)(2), (j)(3), and (j)(4) have been satisfied and removed.

Alabama, in its submission dated August 1, 1991 (Administrative Record No. AL-475), requested that the required amendment at § 901.16(a) requiring Alabama to amend section 880-X-8J-.08(1)(d) to delete the term "amendment"from the definition of permit revision be removed. Alabama stated there are no remaining permits that were issued under the interim program that contain prime farmland that has not already been reclaimed or forfeited to which a revision or admendment would be possible. Further, no current or future mining operatons are possible under an amendment to a permit issued under the Alabama Surface Mining Control and Reclamation Act of 1975. Based on these conditions, the required amendment at § 901.16(a) is removed.

In this amendment at section 880-X-8K-.10(2)(a), Alabama satisfied the required amendment at 30 CFR 901.16(c) by prohibiting the unconditional issuance of a permit where any person who owns or controls the applicant is in violation of certain laws, rules or regulations. That portion of proposed section 880-X-8K-.10(2)(a) dealing with the presumption issue is being deferred as discussed in section A of this rule.

In this amendment at section 880-X-8K-.10(2)(b), Alabama satisfied the required amendment at 30 CFR 901.16(d) by specifying that any permit issued in a situation where a person is in the process of either correcting or appealing an outstanding violation shall be issued solely on a conditional basis.

In this amendment at section 880-X-8K-.10(2)(c), Alabama satisfied the required amendment at 30 CFR 901.16(e) by extending the prohibition on permit issuance to situations where the operator specified in the application or anyone who owns or controls the applicant, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of such a nature and duration as to indicate an intent not to comply with the program.

In this amendment at section 880-X-8K-.11(8), Alabama satisfied the amendment at 30 CFR 901.16(f) be requiring that in the absence of a stay, within 30 days after issuance of a cessation order for operations conducted under the permit, the permittee notify the regulatory authority of any changes that have occurred in the ownership and control information submitted at the time of application or since the submittal of the last update. If no change has occurred, the permittee must submit a statement to that effect.

In this amendment at section 880-X-10C-.40, Alabama satisfied the required amendment at § 901.16(h) by correcting an improper citation. The cross-reference at section 880-X-10D-.36 was not in error.

In this amendment at section 880-X-10C-.45, Alabama satisfied the required amendment at § 901.16(i) by correcting an improper citation. The cross-reference at section 880-X-10D-.41 was not in error.

In this amendment at sections 880-X-10C-.62(2)(c), (e) and 880-X-10D-.56(2)(c),(e), Alabama satisfied the required amendment at 30 CFR 901.16(j)(2) by requiring that stocking and planting arrangements be specified on the basis of local and regional conditions and after consultation with and approval by the appropriate State agencies. As discussed in Finding B-2, Alabama clarified its position in a letter to OSM dated January 22, 1992 (Administrative Record No. AL-481).

In this amendment at sections 880-X-10C-.62(2)(e) and 880-X-10D-.56(2)(e), Alabama satisfied the required amendment at 30 CFR 901.16(j)(3) by applying stocking success standards to areas other than wildlife habitats.

In this amendment at sections 880-X-10C-.62(2)(c)(iv) and 880-X-10D-.56(2)(c)(iv), Alabama satisfied the required amendment at 30 CFR 901.16(j)(4) by using a three year standard to determine successful revegetation.

In addition, the Director is deferring action on section 880-X-8K-.10(2)(a) to the extent that this section provides that in the absence of a failure to abate cessation order, the regulatory authority may presume that a notice of violation has been or is being corrected. The Secretary is in the process of initiating rulemaking regarding the presumption issue.

The Federal regulations at 30 CFR part 901 codifying decisions concerning the Alabama program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs in conformity with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to an approved program. In his oversight of the Alabama program, the Director will recognize only the statutes, regulations, and other materials approved by him, together with any consistent implementing policies, directives, and other materials, and will require the enforcement by Alabama of only such provisions.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The director has determined that this amendment contains no provisions in these categories.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory

programs. Therefore, this action is exempt from the preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of E.O. 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. The Department of the Interior has determined, to the extent allowed by law, that this rule meets the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR 884 and section 502(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 9, 1992.

David G. Simpson,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 901—ALABAMA

1. The authority section for part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 901.15, paragraphs (j)(2)(ii) and (j)(2)(viii) are removed and reserved, paragraph (l)(4) is revised, and paragraphs (m), (n), and (o) are added to read as follows:

§ 901.15 Approval of regulatory program amendments.

* * * * *

(l)(4) The following Alabama Surface Mining Commission regulation is not being approved: 880–X–11B–.02 (8) & (9), Inspections of Abandoned Sites—to the extent that Alabama authorizes an alternative inspection frequency for abandoned sites. The definition of abandoned sites is not approved to the extent that it relates to inspection frequencies at abandoned sites.

(m) The following amendment submitted to OSM on August 1, 1991, is approved effective May 11, 1992, with the exceptions noted.

(1) Revision of the following Alabama Surface Mining Commission regulations:

880–X–2A–.06—Definitions.
880–X–6A–.06—License Application.
880–X–8D–.05—Identification of Interests (as interpreted in the January 22, 1992, letter from the State of Alabama).
880–X–8D–.06—Compliance Information (as interpreted in the January 22, 1992, letter from Alabama).
880–X–8G–.05—Identification of Interests (as interpreted in the January 22, 1992, letter from Alabama).
880–X–8G–.06—Compliance Information (as interpreted in the January 22, 1992, letter from Alabama).
880–X–8K–.10—Permit Application Review.
880–X–8K–.11—Permit Conditions.
880–X–8K–.17—Improvidently Issued Permits–General.
880–X–8K–.18—Improvidently Issued Permits–Rescission.

(2) Addition of the following Alabama Surface Mining Commission regulations:

880–X–10C–.40—Coal Mine Waste.
880–X–10C–.45—Noncoal Mine Waste Disposal.
880–X–10C–.62—Revegetation (as interpreted in the January 22, 1992, letter from Alabama).
880–X–10D–.56—Revegetation (as interpreted in the January 22, 1992, letter from Alabama).
880–X–11C–.02—Cessation Orders.

(n) The following amendment submitted to OSM on November 22, 1989, is approved effective May 11, 1992.

(1) Revision of the following Alabama Surface Mining Commission regulations:

880–X–8I–.10—Subsidence Control Plan.
880–X–10D–.58—Subsidence Control: General Requirements

(o) The following amendment submitted to OSM on July 16, 1990, is approved effective May 11, 1992.

(1) Revision of the following Alabama Surface Mining Commission regulation:

880–X–2A–.07(3)—Termination of Jurisdiction

3. In § 901.16, paragraphs (a), (c), (d), (e), (f), (h), (i), (j)(2), (j)(3), and (j)(4) are removed and reserved.

[FR Doc. 92–10926 Filed 5–8–92; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 914

Indiana Abandoned Mine Land Reclamation Plan

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Indiana Abandoned Mine Land Reclamation Program (hereinafter referred to as the Indiana Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1231 *et seq.*, as amended. The amendment pertains to changes to SMCRA made by the Abandoned Mine Land (AML) Reclamation Act of 1990 which became effective October 1, 1991. The amendment revises the Indiana Program to address the changes to SMCRA effected by the amendments.

EFFECTIVE DATE: May 11, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Calhoun, Acting Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204, telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana Program was made effective by the conditional approval of the Secretary of the Interior Information pertinent to the general background on the Indiana Program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana Program can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of Amendment

By letter received by OSM on December 6, 1991 (Administrative Record No. IND–1010), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana Program on its own initiative. The amendment

consists of revised narratives to modify several sections of the approved Indiana State Reclamation Plan (Plan) which a State is required to have, pursuant to 30 CFR 884.13, in order to carry out its own AML program. Specifically, the following areas of the Program are being revised: (1) Goals and Objectives (30 CFR 884.13(c)(1)), (2) Project Ranking and Selection Procedures (30 CFR 884.13(c)(2)), (3) Coordination with Other Programs (30 CFR 884.13(c)(3)), (4) Reclamation of Private Land (30 CFR 884.13(c)(5)), (5) Public Participation Policies (30 CFR 884.13(c)(7)), (6) Organization of Designated Agency (30 CFR 884.13(d)(1)), (7) Description of Eligible Lands and Waters (30 CFR 884.13(e)(1)(2)), and (8) Economics Base (30 CFR 884.13(f)(1)).

On April 10, 1992, in response to an issue letter prepared by OSM on March 16, 1992, Indiana submitted additional revisions to the program amendment (Administrative Record No. IND–1062). The revisions further modify the following sections of the Indiana Program: Goals and Objectives (30 CFR 884.13(c)(1)), Project Ranking and Selection Procedures (30 CFR 884.13(c)(2)), and Public Participation Policies (30 CFR 884.13(c)(7)).

OSM announced receipt of the proposed amendment in the January 7, 1992, **Federal Register** (57 FR 543) and in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on February 6, 1992.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR Part 884, are the Director's findings concerning the proposed amendment to the Indiana Program. Any minor revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions which are not discussed below contain language similar to the corresponding Federal rules, concern nonsubstantive wording changes, or revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

1. Goal and Objectives (30 CFR 884.13(c)(1))

Indiana is revising its Plan to include those post-1977 abandoned mine lands and waters made eligible for reclamation by the AML Reclamation Act of 1990, which amended SMCRA. Indiana is also revising this section to provide for a set-aside of up to ten percent of each year's allocation of available AML funds into either: (1) A separate fund for the restoration of eligible lands and waters after the expiration of the Federal AML Program or (2) a separate fund for the implementation of an acid mine drainage abatement program. The combined total set-aside on an annual basis into the separate funds will not exceed ten percent of the annual AML allocation.

Section 402(g)(4)(B) of SMCRA provides for the expenditure of funds for the reclamation or drainage abatement of sites if the surface coal mining operation occurred during the period beginning on August 4, 1977, and either: (a) Ending on or before the date of approval of the State program or (b) ending on or before October 1, 1991, and during which period the surety of the mine operator became insolvent.

Section 402(g)(6) authorizes the State to receive and retain up to ten percent of the total of annual grants if the amounts are deposited into either: (a) a special trust fund to reclaim sites after September 30, 1995, or (b) an acid mine drainage abatement and treatment fund.

The Director finds the State's proposed amendments to the goals and objectives portion of its plan to be no less stringent than the requirements of section 402(g) of SMCRA.

2. Project Ranking and Selection Procedures (30 CFR 884.13(c)(2))

Indiana is revising its Plan to define the priority system for the ranking and selection of abandoned mine land sites for reclamation in accordance with SMCRA. Indiana specifies six categories (priorities I through VI), and amends its definition of Priority I and Priority II sites. Priority I sites are those that have documented occurrences of mine related deaths or serious personal injury or where such occurrences appear imminent. Priority II sites are those that adversely impact the public health, safety, or general welfare. In accordance with section 402(g)(4)(C) of SMCRA, priority is given to those eligible post-1977 sites that are in the immediate vicinity of a residential area or that have an adverse economic impact upon a community. Indiana also specifies the data acquisition procedures used in the determination of eligible sites.

Section 403(a)(1) of SMCRA defines a Priority I site as one where reclamation is needed to protect the public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices. Section 403(a)(2) defines Priority II the same as Priority I, except that it refers only to adverse effects of coal mining practices without the element of extreme danger.

The Director finds the State's proposed amendments to the reclamation project ranking and selection procedures portion of its plan to be substantively identical to and therefore not inconsistent with the requirements of section 403(a) of SMCRA.

3. Coordination with Other Programs (30 CFR 884.13(c)(3))

Indiana is revising its Plan to reflect changes in its coordination policy with the Soil Conservation Service (SCS) and other programs. Projects developed by SCS under the Rural Abandoned Mine Program (RAMP) weill be prioritized independently. State AML personnel will participate on the RAMP Committee as invited. If any Federal lands are encountered in the AML program, they will be handled as private lands after consultation to determine the intentions of the Property Management Division for in-house abatement. Although Indiana has elected not to assume emergency powers at this time, it may pursue this program in the future.

The Federal regulations at 30 CFR 884.13(c)(3) require that the State coordinate reclamation work among the State reclamation program, RAMP, and the reclamation programs of any Indian tribes and OSM.

The Director finds the State's proposed change to be not inconsistent with the provisions of the Federal rule at 30 CFR 884.13(c)(3).

4. Reclamation of Private Land (30 CFR 884.13(c)(5))

Indiana is revising its Plan to require the services of an independent appraiser when a lien evaluation estimates an increase in property value after reclamation of $2,500 or more per landowner per project. Indiana arrived at this figure after determining that the fees associated with the filing of a lien are approximately $2,500.

Section 408(a) of SMCRA requires an appraisal by an independent appraiser of the value of the land if the cost of reclamation shall result in a significant increase in property value. Indiana's current Plan already requires an independent appraisal if the projected increase in property value is likely to be significant.

The Director finds that the State's proposed amendment to the reclamation of private land portion of its Plan adds a degree of certainty to the determination of whether an independent appraisial is needed and is not inconsistent with the

requirements of section 408(a) of SMCRA.

5 Public Participation Policies (30 CFR 884.13(c)(7))

Indiana is revising its Plan to reflect State agency organizational changes relating to its public participation policies in the State reclamation program. When a construction grant application is approved, the Project Manager contacts the affected landowners. In its letter dated April 10, 1992, Indiana clarifies that public participation in the preparation of any amendments to the State AML Reclamation Plan will be coordinated and executed by OSM during the public comment and review period of the Federal rulemaking process to provide a single source of public advertisement (Administrative Record No. IND–1062).

The Federal regulations at 30 CFR 884.13(c)(7) require that the State provide procedures for public participation and involvement in the preparation of the State reclamation plan and program.

The Director finds the State's proposed amendment to the public participation portion of its Plan to be consistent with the Federal regulations at 30 CFR 884.13(c)(7).

6. Organization of Designated Agency (30 CFR 884.13(d)(1))

Indiana is revising its Plan to reflect State agency organizational changes. The responsibilities of the Divisions of Water, Geological Survey, and Reclamation as they relate to project management are delineated. The construction and maintenance of any regulated dam are coordinated through the Division of Water. Technical assistance on the design and implementation of new and alternative reclamation strategies, or long term studies, are performed by the Geological Survey Division. The Restoration Section in the Division of Reclamation is subdivided into three functions: Planning and Budget, Project Planning and Design, and Project Management. The Realty and Construction Inspection processes have been incorporated into the Project Management function. Project managers in the Division of Reclamation are responsible for: securing all rights of entry prior to construction, coordinating the reclamation effort, and ensuring adherence to design plans and specifications during the construction phase. The Planning and Budgeting staff in conjunction with the Project Management and Design staff develops reclamation cost estimates.

The Federal regulations at 30 CFR 884.13(d)(1) require that the State provide a description of the administrative and management structure, including the organization of the designated agency conducting the reclamation activity.

The Director finds the State's proposed change to be not inconsistent with the provisions of the Federal rule at 30 CFR 884.13(d)(1).

7. Description of Eligible Lands and Waters (30 CFR 884.13(e)(1)(2))

Indiana is revising its Plan to address eligible post-1977 sites which require reclamation. Eligible sites include interim period bond forfeiture and insolvent surety sites that have had insufficient or no reclamation. Reclamation of those sites will, to a reasonable extent, be based on post-mining land uses and contours as originally approved in the mining permit. Final reclamation of all post-1977 sites will be aimed at restoring land to productive and/or pre-mining land uses. However, site characteristics and land conditions after abondonment may preclude full restoration to Title V standards. The Division of Reclamation will provide information concerning post-1977 AML eligible sites.

Section 404 of SMCRA provides for the reclamation or drainage abatement of sites affected by mining and abandoned or inadequately reclaimed and for which there is no continuing reclamation and for which there is no continuing reclamination responsibility.

The Director finds the proposed change to be not inconsistent with the provisions of section 404 of SMCRA.

8. Economic Base (30 CFR 884.13(f)(1))

Indiana is revising its Plan to further describe the elements of the State's economic base. Timber products have historically been a major economic factor in the coal region where high quality hardwoods are available. The reclamation of mined lands to mixed forest lands is the goal of the restoration program because it will provide both long term economic yield and effective ground cover and erosion control.

The Federal regulations at 30 CFR 884.13(f)(1) require that the State provide a general description of the economic base in the different areas of the State where reclamation is planned.

The Director finds the State's proposed change to be not inconsistent with the provisions of the Federal rule at 30 CFR 884.13(f)(1).

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the January 7, 1992, **Federal Register** (57 FR 543) ended on February 6, 1992. No comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Indiana program. The U.S.Department of Agriculture, Forest Service, and the U.S. Department of the Interior, Fish and Wildlife Service and the Bureau of Mines, concurred without comment.

V. Director's Decision

Based on the above findings, the Director is approving the program amendment to the Indiana Abandoned Mine Land Program submitted by Indiana on December 6, 1991.

The Federal rules at 30 CFR part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This amendment to the Federal rules is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs in conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a state program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Excutive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from the preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of E.O. 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. The Department of the Interior has determined, to the extent allowed by law, that this rule meets the applicable standards of section 2(a) and 2(b) of E.O. 12778. Under SMCRA section 405 and 30 CFR part 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval or conditional approval of State program amendments.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 16, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq*

2. In § 914.15, a new paragraph (kk) is added to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(kk) The following amendment, which concerns abandoned mine land reclamation, is approved effective May 11, 1992.

Revisions to the Indiana State Reclamation Plan corresponding to 30 CFR 884.13 as follows:

884.13(c)(1) Goals and Objectives
884.13(c)(2) Project Ranking and Selection Procedures
884.13(c)(3) Coordination with Other Programs
884.13(c)(5) Reclamation on Private Land
884.13(c)(7) Public Participation Policies
884.13(d)(1) Organization of Designated Agency
884.13(e)(1)(2) Description of Eligible Lands and Waters
884.13(f)(1) Economic Base.

[FR Doc. 92–10927 Filed 5–8–92; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 944

Utah Permanent Regulatory Program

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

ACTION: Final rule; approval of proposed amendment.

SUMMARY: OSM is approving a proposed amendment to the Utah permanent regulatory program (hereinafter referred to as the Utah program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Utah proposed to recodify its Administrative Rules and proposed changes to its Administrative Rules pertaining to coal mining incidental to the mining of other minerals. The amendment revises the Utah program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: May 11, 1992.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. Information regarding the general background for the Utah program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Actions pertaining to the program taken subsequent to the original approval are codified at 30 CFR 944.15, 944.16, and 944.30.

II. Submission of Amendment

By letter dated December 30, 1991 (administrative record No. UT–711), Utah submitted a proposed amendment to its program pursuant to SMCRA. Utah submitted the proposed amendment in response to OSM's 30 CFR part 732 letter dated February 7, 1990, regarding coal mining incidental to the mining of other minerals. The provisions of the Utah Administrative Rules (Utah Admin. R.) that Utah proposed to amend were: 645–100–200, definitions of "cumulative impact area," "cumulative measurement period," "cumulative production," "cumulative revenue," "mining area," and "other minerals;" 645–100–414, applicability; 645–106–100, scope; 645–106–200, application requirements and procedures; 645–106–300, contents of application for exemption; 645–106–400, public availability of information; 645–106–500, requirements for exemption; 645–106–600, conditions of exemption and right of inspection and entry; 645–106–700, stockpiling of minerals; 645–106–800, revocation and enforcement; 645–106–900, reporting requirements; and 645–300–211, administrative and judicial review of decisions on permits.

OSM announced receipt of the proposed amendment in the January 17, 1992, **Federal Register** (57 FR 2067) and in the same notice opened the public comment period and provided an opportunity for a public hearing on the substantive adequacy of the proposed amendment (administrative record No. UT–718). The public comment period closed on February 18, 1992. A public hearing was not held because no one requested an opportunity to testify.

III. Director's Findings

After a thorough review pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds, as discussed below, that the proposed amendment as submitted by Utah on December 30, 1991, is no less stringent than SMCRA and no less effective than the corresponding Federal regulations.

1. Recodification of Utah's Rules

On January 9, 1992, Utah notified OSM that it had recodified its

Administrative Rules (administrative record No. UT-716). Utah changed the prefix for the coal mining rules from R614 to R645, the abandoned mine reclamation rules from R618 to R643, and the procedural rules for the Utah Board of Oil, Gas and Mining from R619 to R641. The substance and the order of these rules is unchanged. Although Utah did not formally propose these recodifications in this amendment, the Director is taking this opportunity to approve these nonsubstantive recodifications of the Utah rules. Throughout this notice OSM uses the new codifications when it cities Utah's rules.

2. Substantive Revisions to Utah's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

Utah proposed the following revisions to the Utah Administrative Rules pertaining to coal mining incidental to the mining of other minerals that are substantive in nature and contain language that is substantively identical to the corresponding Federal regulations (listed in parentheses):

645-100-200 (30 CFR 701.5 and 702.5), definitions of "cumulative impact area," "cumulative production," "cumulative revenue," "mining area," and "other minerals;"

645-100-200(a) (i) and (ii) (30 CFR 702.5), definition of "cumulative measurement period;"

645-100-414 (30 CFR 700.11), applicability;

645-106-100 (30 CFR 702.1), scope;

645-106-210, 212, and 230 through 253 (30 CFR 702.11), application requirements and procedures;

645-106-300 through 326 (30 CFR 702.12), contents of application for exemption;

645-106-400 through 430 (30 CFR 702.13), public availability of information;

645-106-500 through 522 (30 CFR 702.14), requirements for exemption;

645-106-600 through 616 (30 CFR 702.15), conditions of exemption and right of inspection and entry;

645-106-700 through 724 (30 CFR 702.16), stockpiling of minerals;

645-106-800 through 831 and 833 through 843 (30 CFR 702.17), revocation and enforcement;

645-106-900 through 926 (30 CFR 702.18), reporting requirements; and

645-300-211 (30 CFR 775.11(a)), administrative and judicial review of decisions on permits.

Because the proposed Utah rules either contain language that is the same as or similar to the corresponding Federal regulations with only nonsubstantive differences, the Director finds that these proposed revisions to the Utah rules are no less effective than the corresponding Federal regulations. The Director approves the proposed revisions.

3. Utah Admin. R. 645-100-200, and 645-106-211 and 220, Effective Date of Utah's Proposed Rules

Utah proposed at Utah Admin. R. 645-100-200(b) (i) and (ii), in the definition of "cumulative measurement period," and at Utah Admin R. 645-106-211 and 220, application requirements and procedures, an effective date for these proposed rules of April 1, 1992. With the exception of the effective date, these proposed rules are substantively identical to the corresponding Federal regulations at 30 CFR 702.5(a)(2) and 702.11(a) (1) and (b). These Federal regulations have an effective date of April 1, 1990, for Federal programs and the Indian lands program but indicated that the States should insert the applicable effective data of the counterpart provisions in their programs.

OSM chose for its Federal programs and the Indian lands program regulations an effective date of April 1, 1990, which is the beginning of the second calendar-quarter of the year, in recognition of the fact that many businesses customarily record and report information on a calendar-quarter basis. OSM reasoned that this would facilitate compliance with the reporting and recordkeeping requirements of the Federal regulations (54 CFR 52092, 52094; December 20, 1989).

In these rules, Utah proposed an effective date of April 1, 1992. Because OSM's approval of these regulations did not occur prior to April 1, 1992, Utah has agreed to change this date to July 1, 1992, which is the beginning of the first calendar-quarter after OSM's approval (administrative record No. UT-741).

The Director finds that Utah's proposed definition of "cumulative measurement period" at Utah Admin. R. 645-100-200 (b)(i) and (ii) and application requirements and procedures at Utah Admin. R. 645-106-211 and 220 are no less effective than the corresponding Federal regulations at 30 CFR 702.5(a)(2) and 702.11 (a)(1) and (b). The Director approves these proposed rules with the understanding that Utah will promulgate the change of the effective date from April 1, 1992, to July 1, 1992.

4. Utah Admin. R. 645-106-260, 261, and 262, and 645-106-832, Administrative Review in Accordance with Utah Admin. R. 645-300-200

Utah proposed at Utah Admin. R. 645-106-260, 261, and 262, and 645-106-832 that any person adversely affected by determinations made by Utah concerning exemptions from its approved program for coal extraction incidental to the extraction of other minerals, or revocation and enforcement of these determinations, may request administrative review of such decisions in accordance with Utah Admin. R. 645-300-200.

These proposed rules are substantively identical to the corresponding Federal regulations at 30 CFR 702.11(f) and 702.17(c)(2) except that the Federal regulations state that these adversely affected persons may request administrative review of such decisions "in accordance with procedures established under 43 CFR 4.1280 when OSM is the regulatory authority or under corresponding State procedures when a State is the regulatory authority." 43 CFR 4.1280 is applicable to formal administrative review of decisions of the Director of OSM. Utah's referenced Utah Admin. R. 645-300-200 (specifically Utah Admin. R. 645-300-211 and 645-300-212.100) is applicable to formal administrative review of decisions of the Utah regulatory authority.

Because Utah's proposed rules at Utah Admin. R. 645-106-260, 261, and 262, and 645-106-832, through their reference to Utah Admin. R. 645-300-200, do require that formal procedures be followed for requested administrative reviews, the Director finds that the proposed rules are no less effective than the corresponding Federal regulations at 30 CFR 702.11(f) and 702.17(c). The Director approves the proposed rules.

IV. Summary and Disposition of Comments

1. Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments from the Administrator of the Environmental Protection Agency (EPA), the Secretary of Agriculture, and the heads of various other Federal agencies with an actual or potential interest in the Utah program.

U.S. Bureau of Mines

By letter dated January 24, 1992, the U.S. Bureau of Mines acknowledged receipt of the proposed amendment and

stated that it had no comments (administrative record No. UT-720).

U.S. Army Corps of Engineers

By letter dated February 3, 1992, the U.S. Army Corps of Engineers, acknowledge receipt of the proposed amendment and stated that the proposed amendment was satisfactory (administrative record No. UT-731).

U.S. Fish and Wildlife Service

By letter dated February 6, 1992, the U.S. Fish and Wildlife Service acknowledged receipt of the proposed amendment and stated that it found nothing of significant concern (administrative record No. UT-734).

U.S. Mine Safety and Health Administration (MSHA)

By letter dated February 28, 1992, MSHA commented that it found no conflicts between the proposed amendment and the Federal regulations that pertain to refuse piles and impoundments (administrative record No. UT-376). In addition, although proposed Utah Admin. R. 614-106-616 "states that a search warrant may be required for entry into a building," MSHA commented that "[t]he search warrant is not required for MSHA authorized representatives."

Utah Admin. R. 614-106-616 states that "[n]o search warrant shall be required with respect to any activity under R614-106-614 and R614-106-615, except that a search warrant may be required for entry into a building." "Activities under R614-106-614 and R614-106-615" pertain to inspections by authorized representatives of the Utah Division of Oil, Gas and Mining and the Secretary of the Interior, which includes authorized representatives of OSM, of those mining operations claiming exemption from the Utah Coal Mining and Reclamation Act allowed at R614-100-414 for extraction of coal incidental to the extraction of other minerals. Utah's proposed rule at Utah Admin. R. 614-106-616, which is substantively identical to the Federal regulations at 30 CFR 702.15(f) (see finding No. 1), applies only to inspections by Utah and the U.S. Department of the Interior pertaining to the extraction of coal incidental to the extraction of other minerals. The proposed rule does not apply to any authority that MSHA, which is in the U.S. Department of Labor, may have under Federal statutes or regulations to conduct inspections of other aspects of these operations.

3. Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the Administrator of the EPA with the respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*)

None of the changes that Utah proposed to its rules pertain to air or water quality standards. Nevertheless, OSM requested EPA's concurrence on the proposed amendment (administrative record No. UT-717). EPA did not respond.

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), the Director provided the proposed amendments to the SHPO and ACHP for comment. By letter dated January 23, 1992, the SHPO stated that he had no comments concerning the amendment (administrative record No. UT-721). ACHP did not respond.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Utah on December 30, 1991, with the understanding that Utah will promulgate July 1, 1992, as the effective date of the proposed rules. The Director approves the proposed provisions pertaining to coal mining incidental to the mining of other minerals provided that they are fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public, with the exception of the effective date mentioned above. The Director is also taking this opportunity to approve Utah's nonsubstantive recodification of the coal mining rules, abandoned mine reclamation rules, and procedural rules for the Utah Board of Oil, Gas and Mining.

The Federal regulations at 30 CFR part 944 codifying decisions concerning the Utah program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. National Environmental Policy Act

Pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Accordingly, for this section OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require a regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Executive Order 12778

This rule has been reviewed under the principles set forth in section 2 of Executive Order 12778 (56 FR 55195, October 25, 1991) on Civil Justice Reform. The Department of the Interior has determined, to the extent allowed by law, that this rule meets the applicable standards of sections 2(a) and 2(b) of Executive Order 12778. Under SMCRA section 405 and 30 CFR 884 and section 503(a) and 30 CFR 732.15 and 732.17(h)(10), the agency decision on State program submittals must be based solely on a determination of whether the submittal is consistent with SMCRA and the Federal regulations. The only decision allowed under the law is approval, disapproval, or conditional approval of State program amendments.

4. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 15, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII,

subchapter T of the Code of Federal Regulations is amend as set forth below.

PART 944—UTAH

1. The authority citation for part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended by adding a new paragraph (s) to read as follows:

§ 944.15 Approval of amendments to State regulatory programs.

* * * * *

(s) The recodification of the Utah Administrative Rules and revisions to the following Utah Administrative Rules pertaining to coal mining incidental to the mining of other minerals, as submitted to OSM on December 30, 1991, are approved effective May 11, 1992.

645–100–200 Definitions of "Cumulative Impact area," "Cumulative Measurement Period," "Cumulative Production," "Cumulative Revenue," "Mining Area," and "Other Minerals."
645–100–414 Applicability.
645–106–100 Scope.
645–106–200 through 262 Application Requirements and Procedures.
645–106–300 through 326 Contents of Application for Exemption.
645–106–400 through 430 Public Availability of Information.
645–106–500 through 522 Requirements for Exemption.
645–106–600 through 616 Conditions of Exemption and Right of Inspection and Entry.
645–106–700 through 724 Stockpiling of Minerals.
645–106–800 through 843 Revocation and Enforcement.
645–106–900 through 926 Reporting Requirements.
645–300–211 Administrative and Judicial Review of Decisions on Permits.

[FR Doc. 92–10932 Filed 5–8–92; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–92–11]

Special Local Regulations for Marine Events; Blue Angels Airshow; Severn River, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special Local Regulations are being adopted for the Blue Angels airshow and practice sessions to be held on May 23, 24, and 25 1992, over the Severn River, Annapolis, Maryland. The effect of these regulations will be to restrict general navigation in the regulated area for the safety of spectators and participants. These regulations are needed to provide for the safety of life, limb, and property on the navigable waters during the event.

EFFECTIVE DATES: The regulations are effective for the following periods: 1:45 p.m. to 6:45 p.m., May 23, 1992. 12 noon to 5 p.m., May 24, 1992. 12:30 p.m. to 5 p.m., May 25, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QMI Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and LT Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Background and Purpose

The U.S. Naval Academy submitted an application to hold the Blue Angels Airshow on May 23, 24, and 25, 1992. As part of the application, the Naval Academy requested that the Goast Guard provide control of spectator and commercial traffic within the regulated area.

Discussion of Regulations

The U.S. Naval Academy is sponsoring this event, which will consist of six high performance jet aircraft flying at low altitudes in various formations over the Severn River. Federal Aviation Administration regulations require closing the waterway to vessel traffic as a prerequisite to issuing a permit for this event. A meeting at the Naval Academy was held on April 18, 1991, and was attended by several organizations directly involved in the Airshow. The Federal Aviation Administration (FAA) meticulously reviewed all aspects of the Airshow for safety purposes and concluded that the regulated area used in past Airshows allowed small boats to approach too close to center point and the flight path of maneuvering aircraft. Therefore, the westward boundary of the regulated area was moved upriver from Horseshoe Point and Manresa Point to the U.S. Route 50/301 fixed highway bridge (New Severn River Bridge) to ensure the safety of spectator craft. Accordingly, the Commander, Fifth Coast Guard District, is issuing these regulations to close a portion of the Severn River to vessel traffic during the airshow and practice sessions. Closure of the waterway for any extended period is not anticipated, and commercial traffic should not be severely disrupted.

Regulatory Evaluation

This final rule is not considered major under Executive Order 12291 and not significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only be in effect for several hours each day, and the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since the impact of this regulation of non-participating small entities is expected to be ninimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this regulation, will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of the Federalism Assessment.

Environmental Assessment

This final rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T0511 is added to read as follows:

§ 100.35–T0511 Severn River, Annapolis, Maryland.

(a) *Definitions*—(1) *Regulated area.* The Severn River, shore to shore, bounded on the southeast by a line drawn from the quick flashing privately maintained light on the U.S. Naval Academy in position latitude 38°58'40.0" North, longitude 76°28'49.0" West, east to latitude 38°58'33.0" North, longitude 76°25'05.0" West, thence northeast to Carr Point, and bounded on the northwest by the U.S. Route 50/301 fixed highway bridge (New Severn River Bridge) centerpoint at latitude 39°00'23.0" North, longitude 76°30'15.0" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the commander, Coast Guard Group Baltimore.

(b) *Special Local Regulations.*—(1) Except for vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Spectator vessels may anchor outside the regulated area specified in paragraph (a)(1) of these regualtions, but may not block a navigable channel.

(c) *Effective periods.* The regulations are effective for the following periods: 1:45 p.m. to 6:45 p.m., May 23, 1992. 12 noon to 5 p.m., May 24, 1992. 12:30 p.m. to 5 p.m., May 25, 1992.

Dated: April 29, 1992.

W.T. Leland,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 92–10840 Filed 5–8–92; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AE02

Appeals Regulations; Rules of Practice; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to Final Department of Veterans Affairs (VA) regulations published February 3, 1992, (57 FR, 4088–4130). The regulations relate to appeals practice and procedure before the Department of Veterans Affairs.

EFFECTIVE DATE: March 4, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Steven L. Keller, Counsel to the Chairman (01C), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2978.

SUPPLEMENTARY INFORMATION: The Final regulations that are the subject of these corrections revised the Board of Veterans' Appeals Regulations and Rules of Practice governing appeals practice and procedures within the Department of Veterans Affairs, and made conforming amendments to other related VA regulations. As published, the Final regulations contain errors in its reference to two Rules designations. This document will correct those errors.

The following corrections are made to 57 FR 4111, third column, § 20.102, paragraph (d): on line 4 remove "711(f)" and in its place add "711(h)"; on line 6, remove "20.711(f)" and in its place add "20.711(h)".

Dated: May 4, 1992.

B. Michael Berger,

Director, Records Management Service.

[FR Doc. 92–10869 Filed 5–8–92; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 271

[FRL–4127–9]

Georgia; Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Georgia has applied for final authorization for revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Georgia's revisions consist of the Toxicity Characteristic provisions of HSWA Cluster II promulgated on March 29, 1990, and the correction promulgated on June 29, 1990. The Environmental Protection Agency (EPA) has reviewed Georgia's application and has made a decision, subject to public review and comment, that Georgia's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Georgia's application for program revisions. Georgia's application for program revisions is available for public review and comment.

DATES: Final authorization for Georgia's program revisions shall be effective July 10, 1992 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Georgia's program revision application must be received by the close of business June 10, 1992.

ADDRESSES: Copies of Georgia's program revision application are available during 8 a.m.–4 p.m. at the following addresses for inspection and copying: Georgia Department of Natural Resources, Land Protection Branch, room 1154, 205 Butler Street, SE., Floyd Towers East, Atlanta, Georgia 30334; (404) 656–2833; U.S. EPA Region IV, Library, 345 Courtland Street, NE., Atlanta, Georgia 30365; (404) 347–4216. Written comments should be sent to Narindar Kumar at the address listed below.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365; (404) 347–2234.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984, (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority.

States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–268, 124, and 270.

B. Georgia

Georgia initially received final authorization for its base RCRA program effective on August 21, 1984. Georgia received authorization for revisions to its program on September 18, 1986, (51 FR 31618), September 26, 1988, (53 FR 28383), September 24, 1990, (55 FR 30000), November 24, 1990, (55 FR 38997), and April 15, 1991, (56 FR 5656). On July 15, 1991, Georgia submitted a program revision application for additional program approval. Today, Georgia is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Georgia's application and has made an immediate final decision that Georgia's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Georgia. The public may submit written comments on EPA's immediate final decision until June 10, 1992. Copies of Georgia's application for program revisions are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of Georgia's program revision shall become effective July 10, 1992 unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received, EPA will publish either (1) a withdrawal of the immediate final decision, or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Georgia is today seeking authority to administer the Toxicity Characteristic (TC) Provisions of HSWA Cluster II promulgated on March 29, 1990, and June 29, 1990.

Federal requirement	FR reference	Federal promulgation date	State authority
Toxicity	55 FR 11798.	3/29/90	391-3-11-.07
Characteristic.	55 FR 26986.	6/29/90	391-3-11-.10
Revisions			391-3-11-.16

During EPA's review of Georgia's application, a concern arose pertaining to the difference in the effective date of Georgia's rule (11/26/90) and the effective date of the Federal rule (9/25/90), and its impact on the regulated community. EPA was concerned that Georgia's later effective date could potentially allow facilities which do not qualify for interim status under the Federal rules to apply and obtain interim status under state rule once authorization is obtained. EPA considered it important that the State preserve the Federal date under State law. Due to the fact that TC is the first new waste under HSWA which requires a different procedure from past new waste codes, this problem may recur with any new waste codes promulgated under HSWA. EPA contacted the State and suggested language be inserted into their regulations to address this concern. The State has agreed to amend their rules at the next rulemaking to include the clarifying language. EPA is proceeding to authorize Georgia because no facilities to date have applied for interim status since the federal effective date of the TC Rule. In addition, EPA prefers to authorize the State rather than continue the dual regulatory scheme that presently exists.

Georgia is not authorized to operate the Federal program on Indian Lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Decision

I conclude that Georgia's application for program revisions meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Georgia is granted final authorization to operate its hazardous waste program as revised.

Georgia now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Georgia also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 604(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Georgia's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

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

Authority: This notice is issued under the authority of sections 2002(a), 3006, 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 697(b)).

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 92–10232 Filed 5–8–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 271

[FRL–4132–1]

Mississippi; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Mississippi has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Mississippi's revisions

consist of the provisions contained in Non-HSWA Cluster I for two corrections to the Definition of Solid Waste and Satellite Accumulation. These requirements are listed in section B of this notice. The Environmental Protection Agency (EPA) has reviewed Mississippi's application and has made a decision, subject to public review and comment, that Mississippi's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Mississippi's hazardous waste program revisions. Mississippi's application for program revisions is available for public review and comment.

DATES: Final authorization for Mississippi's program revisions shall be effective July 10, 1992 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Mississippi's program revision application must be received by the close of business, June 10, 1992.

ADDRESSES: Copies of Mississippi's program revision application are available during normal business hours at the following addresses for inspection and copying: Mississippi Department of Environmental Quality, 2380 Highway 80 West, P.O. Box 10385, Jackson, Mississippi 39209, (601) 961–5062; U.S. EPA Region IV, Library, 345 Courtland Street NE., Atlanta, Georgia 30365; (404) 347–4216. Written comments should be sent to Narindar Kumar at the address listed below.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365; (404) 347–2234.

SUPPLEMENTARY INFORMATION:

A. Background

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

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–266, 268 and 124 and 270.

B. Mississippi

Mississippi initially received final authorization for its base RCRA program effective on June 27, 1984. Mississippi received authorization for revisions to its program on May 28, 1991, and August 27, 1991. On December 26, 1991, Mississippi submitted a program revision application for additional program approvals. Today, Mississippi is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Mississippi's application and has made an immediate final decision that Mississippi's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Mississippi. The public may submit written comments on EPA's immediate final decision up until June 11, 1992. Copies of Mississippi's application for these program revisions are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Mississippi's program revisions shall become effective July 10, 1992, unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received, EPA will publish either (1) a withdrawal of the immediate final decision, or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Mississippi is today seeking authority to administer the following Federal requirements promulgated on July 1, 1984–June 30, 1985, for Non-HSWA Cluster I.

Federal requirement	FR reference	FR promulgation date
Satellite accumulation.	49 FR 49568	Dec. 20, 1984.
Definition of solid waste; correction.	50 FR 14216	Apr. 11, 1985.
Definition of solid waste; correction.	50 FR 33541	Aug. 20, 1985.

Mississippi incorporates the Federal regulations by reference. The Federal Requirements listed above were adopted on August 22, 1986, and became effective September 22, 1986. A copy of these regulations is available at the Mississippi Department of Environmental Quality as indicated in the **ADDRESSES** section of this notice.

Mississippi is not authorized to operate the Federal program on Indian Lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Decision

I conclude that Mississippi's application for these program revisions meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Mississippi is granted final authorization to operate its hazardous waste program as revised.

Mississippi now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Mississippi also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 604(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal

regulations in favor of Mississippi's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

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

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

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 92–10975 Filed 5–8–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 910802–2036]

RIN 0648–AE09

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS publishes this final rule to implement restrictions on the commercial and recreational harvests of black rockfish, *Sebastes melanops*, off the coast of Washington north of Leadbetter Point, Washington. This rule (1) reduces the recreational daily bag limit for all rockfish from 15 to 12 fish in the area between the U.S.-Canada border and Leadbetter Point; (2) imposes commercial black rockfish trip and possession limits on non-Indian hook-and-line fisheries of 100 pounds (45.4 kg) or 30 percent of the total catch of all species, whichever is greater, between the U.S.-Canada border and Cape Alava, and between Destruction Island and Leadbetter Point; and (3) establishes coastal treaty Indian commercial harvest guidelines for all rockfish between the U.S.-Canada border and Cape Alava, and between Destruction Island and Leadbetter Point. This rule is intended to reduce both commercial and recreational fishing effort on black rockfish in the Westport and Neah Bay areas of the Washington coast, thereby reducing fishing mortality and ensuring a viable recreational harvest of black rockfish in the important recreational fishing areas adjacent to these coastal ports.

EFFECTIVE DATE: June 10, 1992.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115; telephone 206–526–6140.

SUPPLEMENTARY INFORMATION: The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) in the Pacific Ocean off the coasts of Washington, Oregon, and California are managed by the Secretary of Commerce (Secretary) according to the Pacific Coast Groundfish Fishery Management Plan (FMP) prepared by the Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP is implemented by regulations for U.S. fishermen at 50 CFR part 663. General regulations that also pertain to U.S. fishermen are at 50 CFR part 620. Section III.B(c) of the Appendix to part 663 (the socioeconomic framework) provides the authority, guidelines, and criteria for the Council to recommend management measures to the NMFS Northwest Regional Director that address social and economic conditions within the fishery. These measures can be implemented by regulation, without further amending the FMP.

This rule implements restrictions on the recreational and commercial harvests of black rockfish recommended by the Council in accordance with the socioeconomic framework process. A complete discussion of the Council's recommendation, background on the proposed restrictions and analysis of the impacts of the proposed changes are contained in the preamble to the proposed rule which was published in the **Federal Register** on September 19, 1991 (56 FR 47441). Public comments were requested through October 16, 1991. This notice responds to public comments on the proposed rule and announces the final rule.

Comments and Responses

Comments were received from the Washington Trollers Association and three commerical fishermen. Their comments are summarized below with responses.

Comment: The requirement for commercial fishermen to release caught fish is wasteful; the regulations should allow for retention of incidental catch.

Response: The trip limit on black rockfish of 100 pounds or 30 percent (by weight) of all fish on board, whichever is greater, does allow for retention of incidental catch in the Neah Bay area (U.S.-Canada border to Cape Alava) and the Westport area (Destruction Island to Leadbetter Point). The trip limit is intended to prevent targeting on black rockfish by commercial hook-and-line fisheries, and to discourage fishing in areas of black rockfish aggregations while allowing retention of small amounts of incidental catches to prevent wasteful discards. These black rockfish trip and retention limits do not apply to the LA Push area (Cape Alava to Destruction Island), or south of Leadbetter Point, areas where the availability of black rockfish has not declined.

Comment: The 30 percent retention limit is not realistic as an incidental catch allowance.

Response: The 30 percent retention limit is the most liberal trip limit considered by the Council in developing its recommendations to reduce fishing pressure on black rockfish, and is not intended to allow unlimited incidental catches. The Council considered 10 and 20 percent retention limits to minimize potential targeting on black rockfish, but ultimately recommended 30 percent in response to concerns raised in its public meetings by salmon trollers. NMFS shares the Council's concern for potential targeting on black rockfish, and is promulgating the 30 percent retention limit because it achieves the goal of reducing fishing pressure while minimizing discards and impacts on salmon trollers.

Comment: The charterboat fishermen should also be restricted and not allowed unlimited access to black rockfish.

Response: Additional restrictions have been placed on the recreational fisheries. The daily bag limit for all species of rockfish is reduced from 15 to 12 in the entire area from the U.S.-Canada border to Leadbetter Point.

Comment: The declining availability of black rockfish was not caused by the commercial fishermen whose harvests are being restricted.

Response: The exact cause for the declining availability of black rockfish in the Neah Bay and Westport areas is not known, but fishing pressure must be restricted to prevent further declines. Accordingly, restrictions on fishing pressure have been applied to both recreational and commercial fishermen. Nonetheless, commercial fishermen may continue to target on black rockfish in

the La Push area where greater rockfish abundance occurs.

Comment: The economic study on impacts to commercial fishermen and local communities was inadequate.

Response: The Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for this action does address potential impacts to fishermen as well as coastal communities. NMFS believes the EA/RIR does adequately address potential economic impacts of this action.

Comment: The process leading up to the publication of the proposed rule was not accomplished in a manner acceptable to commercial fishermen. Specific procedural violations alleged by the commenter are addressed below.

Response: The public process undertaken by the Council during development of the proposed rule included four public meetings in July 1990, September 1990, November 1990, and March 1991. The Council newsletters and press releases that were distributed prior to the September, November, and March public meetings specifically stated that black rockfish management in Washington would be considered at the respective public meetings. These meeting notices are distributed to a mailing list of interested fishermen and fishing associations and the Council has confirmed that the Washington Trollers Association is on this mailing list. Notice of the Council's specific intent to take final action on fishing restrictions on black rockfish off Washington was published in the March 5, 1991, **Federal Register** (56 FR 9198) notice of the Council's March public meeting. Input from commercial fishermen was received during the process and concerns by salmon trollers regarding the incidental catch restrictions, as noted above, were addressed. In addition, NMFS published a proposed rule with a 30-day comment period. Therefore, NMFS believes that commercial fishermen did have notice and opportunity to comment on this action.

None of the comments received merited any changes to the proposed rule. However, some minor wording changes were made for clarification. The proposed restriction at § 663.23(b)(1)(iii)(B) was modified to apply to persons rather than vessels, which is consistent with other Magnuson Act regulations, and was moved to § 663.7—Prohibitions.

The management measures implemented by this rule are as follows:

1. Rockfish bag limit in the recreational fishery. The NMFS Northwest Regional Director concurs with the Council's recommendation and announces that the daily bag limit for all species of rockfish for the recreational fishery between the U.S.-Canada border and Leadbetter Point (46°38′10″ N. latitude) is 12 fish. This action is classified as a "routine" management measure under 50 CFR 663.23(c)(2)(i)(B) and does not require a change in the regulations.

2. Black rockfish (*Sebastes melanops*) trip and possession limits of 100 pounds or 30 percent of total catch (by weight) of all species (including salmon), whichever is greater, for non-Indian commercial vessels using hook-and-line gear between the U.S.-Canada border and Cape Alava (48°09′30″ N. latitude), and between Destruction Island (47°40′00″ N. latitude) and Leadbetter Point (46°38′10″ N. latitude).

3. Establishment of harvest guidelines for coastal treaty Indian (the Makah, Quileute, Hoh, and Quinault Indian tribes) commercial harvests of all species of rockfish between the U.S.-Canada border and Cape Alava (48°09′30″ N. latitude), and between Destruction Island (47°40′00″ N. latitude) and Leadbetter Point (46°38′10″ N. latitude). The harvest guidelines will be set annually, and reviewed and adjusted as necessary under procedures for developing and implementing annual fishing specifications and apportionments in section II.H. of the Appendix to 50 CFR part 663. For 1992, the Council, during its November 1991 public meeting, recommended harvest guidelines, based on tribal input, of 51,000 pounds (23.1 metric tons (mt)) between the U.S.-Canada border and Cape Alava and 10,000 pounds (4.5 mt) between Destruction Island and Leadbetter Point.

Classification

This final rule is published under authority of the Magnuson Act, 16 U.S.C. 1801 *et seq.*, and was prepared at the request of the Council. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that the measures in this rule are necessary for management of the Pacific Coast groundfish fishery and that they are consistent with the Magnuson Act and other applicable law. This rule is based on the best available scientific information.

The Assistant Administrator has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. No significant adverse impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises.

Based on the environmental assessment/regulatory impact review (EA/RIR), which discusses potential impacts on the environment, the Assistant Administrator has determined that there will be no significant impact on the environment as a result of this rule.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This conclusion is based on the analysis contained in the EA/RIR, which indicates that although a substantial number of vessels that fish off the Washington coast may be affected by this action, the resulting decrease in the annual gross income of the majority of these vessels due to this rule is insignificant.

This rule contains no collection-of-information requirement subject to the Paperwork Reduction Act.

This rule is consistent to the maximum extent practicable with the approved coastal zone managment program of the state of Washington. This determination was submitted for review to the responsible Washington State agency under section 307 of the Coastal Zone Management Act and the State concurred with the determination.

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

This rule complies with the requirements for general notice and opportunity for interested persons to comment as required by the Administrative Procedure Act.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, Indians, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 5, 1992.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 663 is amended as follows:

PART 663—PACIFIC COAST GROUNDFISH FISHERY

1. The authority citation for part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 663.7, paragraph (p) is added as follows:

§ 663.7 Prohibitions.

* * * * *

(p) Have aboard a commerical hood-and-line fishing vessel (other than a vessel operated by persons under § 663.23 (b) (1) (ii)), more than the amount of the trip limit set for black rockfish by § 663.23 (b) (1) (iii) while that vessel is fishing between the U.S.-Canada border and Cape Alava (48°09'30" N. latitude), or between Destruction Island (47°40'00" N. latitude) and Leadbetter Point (46°38'110" N. latitude).

* * * * *

3. In § 663.23, paragraph (b)(1) is revised to read as follows:

§ 663.23 Catch Restrictions.

* * * * *

(b) *Commercial fishing*—

(1) *Rockfish.* (i) The trip limit for a vessel engaged in fishing with a pelagic trawl with mesh size less than 4.5 inches in the Conception or Monterey subareas is 500 pounds or 5 percent by weight of all fish on board, whichever is greater, of the species group composed of bocaccio, chillipepper, splitnose, and yellowtail rockfish per fishing trip.

(ii) Harvest guidelines for commerical harvests of all species of rockfish by members of the Makah, Quileute, Hoh, and Quinault Indian tribes will be established annually for the areas between the U.S.-Canada border and Cape Alava (48°09'30" N. latitude), and between Destruction Island (47°40'00" N. latitude) and Leadbetter Point (46°38'10" N. latitude), in accordance with the procedures for implementing annual specifications in Section II.H of the Appendix to this part.

(iii) *Black rockfish.* The trip limit for black rockfish (*Seabastes melanops*) for commercial fishing vessels using hook-and-line gear between the U.S.-Canada border and Cape Alava (48°09'30" N. latitude), and between Destruction Island (47°40'00" N. latitude) and Leadbetter Point (46°38'10" N. latitude), is 100 pounds or 30 percent by weight of all fish on board, whichever is greater, per vessel per fishing trip. This trip limit does not apply to coastal treatly Indian fishermen operating under harvest guidelines established under paragraph (b) (1) (ii) of this section.

* * * * *

Appendix to Part 663 [Amended]

4. In the appendix to part 663—Groundfish Management Procedures, Section II.H., and the following sentence at the end of the first paragraph.

* * * * *

The Council also will develop recommendations for the specification of commerical harvest guidelines for rockfish harvests by members of the Makah, Quileute, Hoh, and Quinault Indian tribes specified in § 663.23 (b) (1) (ii).

* * * * *

[FR Doc. 92-10867 Filed 5-8-92; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 91
Monday, May 11, 1992

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.

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 910

[No. 92-305]

Leverage Ratio on Consolidated Federal Home Loan Bank Debt

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) proposes to revise its regulations regarding leverage of the Federal Home Loan Bank (FHLBank) System by expanding the definition of debt to include certain senior unsecured liabilities and to increase the permitted debt to capital ratio to 20:1. The proposed leverage constraints provide meaningful protection to FHLBank System bondholders. The proposed change would increase the availability of housing finance and increase the attractiveness of System membership.

DATES: Comments must be received by July 10, 1992.

ADDRESSES: Send comments to: Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Michael J. Higgins, Director of Strategic Planning (202) 408-2962, or James H. Gray Jr., Associate General Counsel, (202) 408-2552.

SUPPLEMENTARY INFORMATION:

Discussion

A. Background

Section 702 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law No. 101-73, 103 Stat. 183 (August 9, 1989) (FIRREA) charges the Federal Housing Finance Board (Finance Board), *inter alia*, with the duty to ensure that the Federal Home Loan Banks (FHLBanks) carry out their housing finance mission and "* * * remain adequately capitalized and able to raise funds in the capital markets * * *." 12 U.S.C. 1422(a)(3). The Finance Board issues consolidated obligations for which the FHLBanks are jointly and severally liable. The funds so raised enable the FHLBanks to make competitively priced advances available to members. The proposed change in the leverage ratio will provide the FHLBanks with greater flexibility to make more efficient use of their capital. In the view of the Finance Board, this flexibility is necessary for the FHLBanks to continue to provide reasonably priced advances to current and prospective members, in furtherance of the Finance Board's Congressionally-imposed duties to ensure that the FHLBanks carry out their housing finance mission and remain adequately capitalized and able to raise funds in the capital markets.

Through the first fifteen years of the FHLBank System's existence, the FHLBanks raised funds in the capital markets through the issuance of consolidated debentures under 12 U.S.C. 1431(b). The proceeds of the consolidated debentures were divided among the twelve FHLBanks to finance their operations. Each FHLBank received a portion of the consolidated debentures based on its anticipated operational needs. However, the ability of the FHLBank System to issue consolidated debentures was limited statutorily to an amount equal to five times the total paid-in capital of the twelve FHLBanks. See 12 U.S.C. 1431(b). Since each FHLBank member could then borrow up to twelve times the amount of its FHLB Bank stock, there was concern that the FHLBank System could become unable to borrow additional funds to meet member advance demand. See 47 Stat. 725, 731 (1932); formerly at 12 U.S.C. 1431 (c) (repealed by Pub. L. No. 97-320, sec. 352, 96 Stat. 1507 (October 15, 1982)).

In 1946, the former Federal Home Loan Bank Administration (Bank Administration), the predecessor to the former Federal Home Loan Bank Board (Bank Board), retired the consolidated debentures issued pursuant to 12 U.S.C. 1431(b) to allow for the issuance of consolidated bonds under 12 U.S.C. 1431(c).[1]

To facilitate these changes, the former Bank Administration promulgated regulations which set forth the conditions and limitations under which it would issue FHLBank consolidated bonds. The regulations were first published § 4.3(a) and § 4.3(f) of title 24 of the Code of Federal Regulations in substantially the same form as they remain today. See 11 FR 9925 (Sept. 10, 1946). More recently, these conditions were codified in the former Bank Board's regulations at 12 CFR 506.1 and 506.6 (1989 redesignated). After the enactment of FIRREA, the Bank Baord's regulations were redesignated as § 910.1 and § 910.6 of the regulations for the newly created Finance Board. The only revision to the regulations at that time was the change in the agency's name. See 54 FR 36757 (Sept. 5, 1989).

Under the current regulations, there are two conditions for the issuance of consolidated obligations. First, there is a "leverage ratio requirement" that the Finance Board cannot issue consolidated obligations in excess of 12 times the FHLBanks' total paid-in capital stock and reserves set out in 12 U.S.C. 1436. In addition to the leverage ratio requirement, § 910.1 also requires that the FHLBanks hold eligible assets, free and clear of any liens or pledges, in an amount greater than or equal to the amount of consolidated obligations outstanding (the "negative pledge requirement"). Although the Finance Board proposes to make changes in both the leverage ratio and negative pledge requirements, the Finance Board intends to retain both. Along with the FHLBanks' excellent credit record of never having suffered a credit loss, these limitations will continue to provide substantial protection to FHLBank System bondholders. These are in addition to the protections provided by the FHLBank System's strong capital position.

B. Proposed Change

The Finance Board has determined that the FHLBank System needs the ability to increase the FHLBank System's leverage. Increasing the FHLBank System's ability to leverage its capital will enable the FHLBanks to offer lower advance rates, which will make advances more attractive and thus

[1] 12 U.S.C. 1431(c) authorizes the Finance Board to issue consolidated bonds only if there are no outstanding debentures at the time of the issuance of consolidated bonds or if the consolidated bonds are issued to refund all outstanding debentures.

enable the FHLBank System to better accomplish its housing mission. The proposed changes will not take effect until thirty days after publication of a final rule.

Section 910.0 defines certain terms. "Senior bonds" are the bonds subject to the leverage ratio, which currently includes all consolidated bonds outstanding. "Unsecured, senior liabilities" refers to certain obligations accounted for as liabilities under Generally Accepted Accounting Principles, such as deposits.

Section 910.1 of the revised regulations would increase the leverage ratio ceiling from 12:1 to 20:1. In addition, the debt component of the ratio is being changed to include not only senior bonds, but also unsecured, senior liabilities. The reference to senior bonds would exclude any liabilities subordinated to the then outstanding consolidated obligations.

In 1946, when the current regulation was originally promulgated, consolidated obligations comprised virtually all of the obligations of the FHLBank System. However, as the services offered by the FHLBanks have evolved over the last 45 years, member deposits have become a more significant item on the balance sheet. By modifying the leverage formula to take into account senior bonds and unsecured, senior liabilities, the proposed rule provides a more comprehensive debt limitation test than current § 910.1. This enhances bondholder protection.

The proposed rule would also change the definition of capital for purposes of this calculation to include all paid-in capital stock, retained earnings, and reserves, rather than just paid-in capital stock and reserves under 12 U.S.C. 1436 as in the current regulation.

The proposed rule would not make any change in the Finance Board's control over the issuance of FHLBank obligations, including the terms of issuance, and would retain a negative pledge requirement. However, the proposed rule clarifies that the Finance Board can delegate this responsibility. To account for certain conservative investment opportunities that have emerged since 1946, the proposed rule would increase the types of assets that qualify for the negative pledge requirement. The proposed rule would add assets that are suitable investments for the FHLBanks under 12 U.S.C. 1436(a). These assets include obligations, participations or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association; mortgages, obligations or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation, and such securities as fiduciary and trust funds may invest in under the laws of the state in which the FHLBank holding the investment is located.

Paragraph (c)(6) adds an additional category of qualifying assets which permits the use of other assets to meet the negative pledge requirement. The bondholders' assurance that these investments will have a relatively conservative risk profile is the requirement that such investments have a rating or assessment at least equal to senior bonds, which currently enjoy the highest investment rating. Finally, under the last clause of § 910.1(c), any assets securing certain obligations may be used to meet the negative pledge requirement. This final clause acknowledges that assets segregated for the repayment of consolidated obligations reduce, dollar for dollar, the amount of consolidated obligations to be repaid from unpledged assets.

The defeasance language in § 910.6 is made more precise in the proposed rule to clarify that if the Finance Board ever does decide to retire bonds by defeasance, it could use a "net defeasance," whereby the anticipated interest on the defeasance escrow would be taken into account in determining the amount of obligations required for defeasance.

In addition to the mechanisms in § 910.6 that have historically permitted limited changes in the leverage ratio or the negative pledge requirement, the proposed rule would allow the Finance Board to make changes in the leverage ratio requirement if the Finance Board receives written evidence from at least one nationally recognized securities rating firm that the change will not cause a reduction in the then current rating of senior bonds issued by the FHLBank System or next to be issued; or a written opinion from an investment banking firm that the proposed change would not have a materially adverse effect on the creditworthiness of senior bonds outstanding or those next to be issued.

The Finance Board has considered a number of alternatives in developing the proposed rule, including defeasance of the senior bonds which is not feasible now and allowing the FHLBanks to issue individual non-consolidated debt pursuant to 12 U.S.C. 1431(a). The Finance Board believes that the approach selected is the one best suited to accomplish the Finance Board's housing finance mission prescribed by Congress.

Request for Public Comments

The Finance Board hereby requests comment on all aspects of the proposed rule. Interested parties are invited to submit their comments within the sixty-day comment period.

Paperwork Reduction Act

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is contained in the proposed rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 910

Federal home loan banks.

Accordingly, the Federal Housing Finance Board proposes to amend title 12, chapter IX, subchapter A, part 910 of the Code of Federal Regulations as set forth below:

Part 910—CONSOLIDATED BONDS AND DEBENTURES

1. The authority citation for part 910 is revised to read as follows:

Authority: Sec. 2B, as added by 103 Stat. 183, 413 (12 U.S.C. 1422b); sec. 11 as amended by 103 Stat. 183, 418 (12 U.S.C. 1431).

2. Section 910.0 is added to read as follows:

§ 910.0 Definitions.

(a) *Board* means the Federal Housing Finance Board.

(b) *Consolidated bonds* means bonds or notes issued on behalf of all Federal Home Loan Banks.

(c) *Senior bonds* means consolidated bonds issued pursuant to 12 U.S.C. 1431 and this part and not defeased, other than bonds specifically subordinated to any then outstanding consolidated bonds which are not subordinated.

(d) *Unsecured, senior liabilities* means all obligations of the Banks recognized as a liability under generally accepted accounting principles, except:

(1) Liabilities that are covered by a perfected security interest;

(2) Consolidated bonds; and

(3) Bonds issued pursuant to 12 U.S.C. 1431(a).

3. Section 910.1 is revised to read as follows:

§ 910.1 Issuance of consolidated bonds.

(a) *General.* The Board will determine and authorize the issuance of all consolidated bonds, dates of issue, maturities, rates of interest, terms and conditions thereof, and the manner in which such bonds shall be issued, subject to the provisions of 31 U.S.C. 9108. The Board in its discretion may delegate this responsibility.

(b) *Leverage limit.* The Board shall not issue senior bonds, other than bonds issued to refund consolidated bonds previously issued, if, immediately following such issuance, the aggregate amount of senior bonds and unsecured, senior liabilities of the Federal Home Loan Banks exceeds twenty (20) times the total paid-in capital stack, retained earnings and reserves of all the Federal Home Loan Banks.

(c) *Negative pledge requirement.* The Federal Home Loan Banks shall at all times maintain assets of the following types, free from any lien or pledge, in a total amount at least equal to the amount of senior bonds outstanding:

(1) Cash;

(2) Obligations of or fully guaranteed by the United States;

(3) Secured advances;

(4) Mortgages as to which one or more Federal Home Loan Banks have any guaranty or insurance, or commitment therefore, by the United States or any agency thereof;

(5) Investments described in section 16(a) of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1436(a)); and

(6) Other securities which have been assigned a rating or assessment by a major nationally recognized securities rating agency that is equivalent to or higher than the rating or assessment assigned by such agency on senior bonds outstanding.

Provided, however, That any asets of the types described in paragraphs (c)(1) through (6) of this section which are subject to a lien or pledge for the benefit of the holders of any issue of senior bonds shall be treated as if they were assets free from any lien or pledge for purposes of compliance with this provision.

4. Section 910.6 is revised to read as follows:

§ 910.6 Reservation of right to revoke or amend; limitations thereon.

(a) *General.* The right to revoke or amend this part, or to prescribe and issue supplemental or amendatory rules and regulations thereto, is hereby reserved.

(b) *Limitation on amendment of leverage limit or negative pledge requirement.* No revocation or relaxation of any of the restrictions or requirements contained in or imposd by § 910.1(b) or (c) shall be effected except:

(1) If there are no senior bonds then outstanding or if there shall have been deposited with the Treasurer of the United States, noncallable (or called) direct obligations of the United States of America or obligations fully guaranteed by the United States of America of such maturities or redemption dates and interest payment dates, and to bear such interest, as will be sufficient to pay in full (together with any other moneys placed in trust and irrevocably committed for such payment and without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom) the principal of and interest to date of maturity or to such date designated for redemption and any redemption premium on all senior bonds the holders of which have not consented to such revocation or relaxation; or

(2) Section 910.1(b) may be changed by the Board in any manner if the Board receives either:

(i) Written evidence from at least one major nationally recognized securities rating agency which rates or makes an assessment of the senior bonds that such change in that provision will not result in the lowering of its then-current rating or assessment on senior bonds outstanding or next to be issued; or

(ii) A written opinion from an investment banking firm that such change would not have a materially adverse effect on the creditworthiness of senior bonds outstanding or next to be issued.

By the Federal Housing Finance Board.

Dated: May 1, 1992.

Daniel F. Evans, Jr,

Chairman.

[FR Doc. 92-10717 Filed 5-8-92; 8:45 am]

BILLING CODE 6725-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-CE-28-AD]

Airworthiness Directives; Beech Models A36 and B36TC Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Beech Models A36 and B36TC airplanes. The proposed action would require sealing the cabin door upper hinge cavity. The Federal Aviation Administration (FAA) has received several reports of water leakage in the cabin door upper hinge cavity on the affected airplanes, which could collect in the electrical wiring and inverted cover of the annunciator print board circuit and short out electrical circuits, including the circuit for operating the landing gear. The actions specified by the proposed AD are intended to prevent failure of the landing gear circuit, which could result in the inability to extend the landing gear.

DATES: Comments must be received on or before July 15, 1992.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-28-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4122; Facsimile (316) 936-4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92–CE–28–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–28–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion:

Certain Beech Models A36 and B36TC airplanes were inadvertently manufactured with unsealed hinge cavities, and the FAA has received reports of water leakage into the cabin through unsealed hinge cavities on four of these airplanes. In all instances, the water leaked through the unsealed cabin door upper hinge cavity, ran down the wiring into the annunciator printed circuit board assembly, and shorted out electrical circuits. The annunciator printed circuit board contains circuits for the standby generator, air-conditioning system, annunciator control, landing gear assembly, aircraft annunciators, and battery control. In one of the referenced incidents, the landing gear would not extend electrically, and initially would not extend manually because the sector gear was jammed in the actuator. If water leakage into the annunciator printed circuit board is not detected and corrected, then the inability to extend the landing gear could result.

Beech has issued Service Bulletin (SB) No. 2437, dated April 1992, which specifies procedures for sealing the cabin door upper hinge cavity on certain Beech Models A36 and B36TC airplanes.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent failure of the landing gear circuit, which could result in the inability to extend the landing gear.

Since the condition described is likely to exist or develop in other Beech Models A36 and B36TC airplanes of the same type design, the proposed AD would require sealing the cabin door upper hinge cavity in accordance with the instructions in Beech SB No. 2437, dated April 1992.

The FAA estimates that 711 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $156,420.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Beech: Docket No. 92–CE–28–AD.

Applicability: Model A36 airplanes (serial numbers E–1946, E–2104, and E–2111 through E–2682), and Model B36TC airplanes (serial numbers EA–320, and EA–389 through EA–534), certificated in any category.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the landing gear circuit, which could result in the inability to extend the landing gear, accomplish the following:

(a) Seal the upper door upper hinge cavity in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Beech Service Bulletin No. 2437, dated April 1990.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note.—Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 5, 1992.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–10895 Filed 5–8–92; 8:45 am]

BILLING CODE 4930–13–M

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14 CFR Part 71

[Airspace Docket No. 91–AEA–24]

Proposed Alteration of Control Zone and Transition Area; Westhampton Beach, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking

SUMMARY: The FAA has been notified that the name of the Suffolk County Airport, Westhampton Beach, NY, is changed to the Francis S. Gabreski Airport. Additionally, a new helicopter instrument approach procedure to the

Southampton Heliport, Southampton, NY, has been developed. The FAA proposes to update the associated control zone and transition area descriptions to reflect airport name changes, additional airspace requirements, and the geographic locations of both airports. The intended effect of this proposed action is to provide controlled airspace for the segregation of aircraft operating under instrument flight rules from those operating under visual conditions in controlled airspace.

DATES: Comments must be received on or before June 1, 1992.

ADDRESSES: Send comments on the rule in triplicate to: George Dodelin, Manager, System Management Branch, AEA-530, Docket No. 91-AEA-24, F.A.A. Eastern Region, Fitzgerald Federal Building # 111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA-7, F.A.A. Eastern Region, Fitzgerald Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the System Management Branch, AEA-530, F.A.A. Eastern Region, Fitzgerald Federal Building # 111, John K. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, F.A.A. Eastern Region, Fitzgerald Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553-0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-AEA-24". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA-7, F.A.A. Eastern Region, Fitzgerald Federal Building # 111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering amendments to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the legal descriptions for the control zone and transition area established at Westhampton Beach, NY, due to a name change from the Suffolk County Airport to the Francis S. Gabreski Airport, Westhampton Beach, NY, and the development of a new helicopter instrument approach procedure to the Southampton Heliport, Southampton, NY. The subject control zone and transition area descriptions were republished in §§ 71.171 and 71.181 of FAA Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1.

The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. They, therefore: (1) Are not a "major rule" under Executive Order 12291; (2) are not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) do not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that when promulgated, these proposed rules will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas, Incorporation by reference.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1992, and effective November 1, 1991, is amended as follows:

Section 71.171 Control Zones

* * * * *

AEA NY CZ Westhampton Beach, NY [Revised]

Francis S. Gabreski Airport, Westhampton Beach, NY (lat. 40°50'37"N., long. 72°37'56"W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.8 mile radius of the Francis S. Gabreski Airport, excluding that portion within the Calverton, NY, Control Zone. This control zone is effective during the dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Section 71.181 Transition Areas

* * * * *

AEA NY TA Westhampton Beach, NY [Revised]

Francis S. Gabreski Airport, Westhampton Beach, NY (lat. 40°50'37"N., long. 72°37'56"W.)

Southampton Heliport, NY (lat. 40°50'50"N., long. 72°27'52"W.)

SQUIR, NY, OM (lat. 40°54'16"N., long. 72°33'25"W.)

That airspace extending upward from 700 feet above the surface within a 7.9 mile radius of the Francis S. Gabreski Airport and within 4.4 miles either side of the Francis S. Gabreski Airport northeast localizer course, extending from the SQUIR OM to 10 miles

northeast of the OM and within a 5 mile radius of the Southampton Heliport.

* * * * *

Issued in Jamaica, New York, on April 10, 1992.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 92-10922 Filed 5-8-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 92-AWP-3]

Proposed Revision to Restricted Area R-2302; Flagstaff, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Restricted Area R-2302 Flagstaff, AZ. Currently, the altitudes are "Surface to 11,000 feet MSL" with a time of "0800 to 2400 local time, Monday to Saturday." This proposal would lower the ceiling to 10,000 feet MSL to accommodate a new airway between Flagstaff and Peach Springs, AZ. It also would change the time to"0700 to 1700 local time, Monday to Saturday; other times by NOTAM." This would release airspace to the public, but continue to provide the Army the operational flexibility to accomplish their mission.

DATES: Comments must be received on or before June 24, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP-500, Docket No. 92-AWP-3, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Linda Ullom, Military Operations Program Office (ATM-420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-7683.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-AWP-3." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 73.23 of part 73 of the Federal Aviation Regulations (14 CFR part 73) to revise Restricted Area R-2302 Flagstaff, AZ. The Army is supporting an FAA request to lower the ceiling of R-2302 from 11,00 feet MSL to 10,000 feet MSL. This is to accommodate V-291, a new airway being established between Flagstaff and Peach Springs, AZ. The proposal would change the existing time of "0800 to 2400 local time, Monday to Saturday" to "0700 to 1700 local time, Monday to Saturday; other times by NOTAM." The time change would more accurately reflect current requirements, but continue to allow the Army the flexibility to accomplish their mission. In addition, "FAA, Albuquerque ARTCC" would be established as the controlling agency, while "U.S. Army" would be added to the existing using agency name. Section 73.23 of Part 73 of the Federal Aviation Regulations was republished in FAA Handbook 7400.8 effective November 1, 1991.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. An environmental review of the proposal will be completed as appropriate prior to any final decision.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 73 of the Federal Aviation Regulations (14 CFR part 73) as follows:

PART 73—SPECIAL USE AIRSPACE

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.23 [Amended]

2. Section 73.23 is amended as follows:

R-2302 Flagstaff, AZ [Revised]

Boundaries. A circular area with a 6,600-foot radius centered at lat. 35°10'20" N., long. 111°51'19" W.

Designated altitudes. Surface to 10,000 feet MSL.

Time of designation. 0700 to 1700 local time, Monday to Saturday; other times by NOTAM.

Controlling agency. FAA, Albuquerque ARTCC.

Using agency. U.S. Army, Commanding Officer, Navajo Ordnance Depot, Flagstaff, AZ.

Issued in Washington, DC, on May 1, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-10924 Filed 5-8-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-ACE-1]

Proposed Alteration and Establishment of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice porposes to alter the descriptions of several VOR Federal airways in the State of Kansas and establish one new airway in the State of Oklahoma. The airways are in areas of limited radar coverage. These changes would benefit air operations by aligning these airways in an area of continous radar coverage. This action would enhance flight operations and reduce controller workload.

DATES: Comments must be received on or before June 29, 1992

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ACE-500, Docket No. 92-ACE-1, Federal Aviation Administration, 601 East 12th Street, Federal Building, Kansas City, MO 64106.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-ACE-1." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washingotn, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter several VOR Federal airways in the State of Kansas and establish one new airway in the State of Oklahoma. These airways would benefit air operations by aligning these airways in an area of continuous radar coverage. This action would enhance flight planning and reduce controller workload. The airspace designations for the VOR Federal airways proposed to be amended in this document are published in § 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The amended designations for these airways and the designation for the new airway proposed in this document would be published subsequently in Handbook 7400.7, if this proposed rule is promulgated.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways, Incorporation by reference.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

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V-255 [Revised]

From Tobe, CO; INT Tobe 070°T(058°M) and Garden City, KS, 265°T(253°M) radials; to Garden City.

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V-261 [Revised]

From Wichita, KS; Manhattan, KS; INT Manhattan 009°T(360°M) and Lincoln, KS, 178°T(169°M) radials; to Lincoln.

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V-380 [Revised]

From O'Neill, NE; via Wolbach, NE; Grand Island, NE; Hastings, NE; Mankato, KS; INT Mankato 104°T(094°M) and Topeka, KS, 293°T(288°M) radials; to Topeka. The airspace within the O'Neill MOA is excluded during the time that the MOA is activated by NOTAM.

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V-516 [Revised]

From Tobe, CO; Liberal, KS; Anthony, KS; Pioneer, OK; Oswego, KS.

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V-524 [Revised]

From Laramie, WY; INT Laramie 069° and Scottsbluff, NE, 254° radials; Scottsbluff; North Platte, NE; Hayes Center, NE; McCook, NE; to Hays, KS.

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V-561 [New]

From Gage, OK; to Sayer, OK.

* * * * *

Issued in Washington, DC, on May 4, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-10909 Filed 5-8-92; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-4132-3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania Group III CTG: RACT for VOC From Synthetic Organic Chemical Manufacturing Industries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of a request from the Pennsylvania Department of Environmental Resources (PADER) to revise the Philadelphia portion of the Commonwealth of Pennsylvania ozone State Implementation Plan (SIP) submitted on September 9, 1991. This revision establishes and requires reasonably available control technology (RACT) to control fugitive volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industries (SOCMI). This revision has been submitted by PADER at the request of Philadelphia Air Management Service (AMS) to fulfill its 1982 ozone SIP commitment to adopt all applicable control technique guidelines (CTGs) published by EPA. The intended effect of this action is to propose approval of SOCMI regulations. This action is being taken under section 110 and part D of the Clean Air Act as amended by the Clean Air Act Amendments of 1990.

DATES: Comments must be received on or before June 10, 1992.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 2357, Executive House, 2nd & Chestnut Street, Harrisburg, PA 17120; and Department of Public Health, Air Managment Services, 500 South Broad Street, Philadelphia, PA 19146.

FOR FURTHER INFORMATION CONTACT: Mrs. Aquanetta Dickens, (215) 597-4554. The FTS and commerical numbers are the same.

SUPPLEMENTARY INFORMATION: In March 1984, EPA published a CTG document entitled, "Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manfacturing Equipment" (SOCMI Fugitives (EPA 450/3-83-006)). To fulfill the requirements of section 172(a) (2) and (b)(3) of the CAA and its 1982 SIP, PADER submitted a revision of the Philadelphia portion of the Pennsylvania ozone SIP to EPA on September 9, 1991. This revision establishes RACT for the control of fugitive emissions from SOCMI, adopted in accordance with the recommendations made in the CTG document, referenced above.

The Philadelphia AMS's September 9, 1991 submittal also included regulations which relate to the installation and operation of Stage II vapor recovery equipment and limitation of the Reid Vapor Pressure (volatility) of gasoline delivered or used in Philadelphia. Only the portion of the September 9, 1991 SIP revision submittal pertaining to the control of VOC leaks from SOCMI facilities is addressed by this rulemaking action and notice. The remaining amendments will be subjects of separate rulemaking actions and notices.

Proposed Action

EPA is proposing to approve a revision to the Philadelphia portion of the Pennsylvania SIP, submitted on September 9, 1991. This amendment revises Air Management Regulation V, approved July 10, 1971, by adding a new section XIII, entitled "Process Equipment Leaks." EPA has reviewed this SIP revision submittal and has determined that the amendments constitute RACT for this source category. Therefore, EPA is proposing approval of Pennsylvania's request to amend the Philadelphia portion of its SIP in accordance with section 110 and part D of the CAA.

EPA is soliciting public comments on the revision discussed in this notice. A more detailed description of EPA's evaluation of the above regulatory changes is presented in the Technical Support Document that has been prepared for this revision. That document is available for public inspection at the location provided in the **ADDRESSES** section of this notice. These comments will be considered before taking final action.

Interested parties may participate in the Federal rulemaking procedures by submitting written comments to the EPA regional office listed in the **ADDRESSES** section of this notice.

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

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

This action proposes approval of the revisions to Regulation V as a revision to the Philadelphia portion of the Pennsylvania SIP, which establish RACT for the control of fugitive VOC emissions from SOCMI, and has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54

FR 2222) from the requirements of section 3 of Executive Order 12291. "EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The Office of Management and Budget has agreed to continue the temporary waiver until such time as it rules on EPA's request."

The Regional Administrator's final decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110 (a) (a) (A)–(K) and 110 (a) (8) and part D of the Clean Air Act, as amended, and EPA regulations at 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 4, 1992.

Edwin B. Erickson,

Regional Administrator, Region III.

[FR Doc. 92–10976 Filed 5–8–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 92–78; FCC 92–171]

End User and Mobil Licensing Information

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has proposed rule changes that, if adopted, would eliminate the requirement that private land mobile licensees of shared systems maintain and periodically furnish detailed information about their end users. The proposed rule changes would also reduce the frequency with which most private land mobile licensees must file license modification applications when they change the number of mobiles or pagers on their system. Also, if adopted, a proposed rule change would allow the direct filing of certain license modification applications with the Commission. These actions are taken to remove unnecessary regulatory burdens on private land mobile licensees. The proposed rule changes would assist in providing more effective and efficient licensing procedures thus serving the needs of the public, industry and the Commission.

DATES: Comments must be filed on or before June 26, 1992, and reply comments on or before July 13, 1992.

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

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden, Rules Branch, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, PR Docket No. 91–78, FCC 92–171, adopted April 9, 1992, and released May 5, 1992. The full text of this Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, Washington, DC 20036, telephone (202) 452–1422.

Summary of Notice of Proposed Rule Making

1. In this Notice, we propose to eliminate or modify various rules that impose unnecessary regulatory burdens on private land mobile licensees. First, we propose to eliminate the requirement that licensees of shared systems that do not individually license their end users maintain and periodically furnish detailed information about their end users. Second, we propose to reduce the frequency with which most private land mobile licensees must file license modification applications when they change the number of their mobiles or pagers. Third, we propose that, under certain circumstances, licensees should be permitted to file modification applications directly with the Commission rather than through a frequency coordinator.

2. Pursuant to § 90.179(e), applicants for shared private land mobile stations are required to submit with their applications detailed information about their end users (the "end user list"). Upon grant of a license, there is no further obligation to submit an unpdated end user list to the Commission. Because a licensee's customer base is likely to be only in the developmental stage at the application phase, however, we have not found that the end user list provides either reliable or meaningful information. Section 90.179(e) also requires licensees to furnish end user information, on a periodic basis, to frequency coordinators. Except at the exact time of filing, however, the end user list fails to accurately reflect the number of mobiles or pagers operating on a system. We currently have less burdensome and more reliable means of acquiring up-to-date and accurate information on channel usage. License modification requirements pursuant to § 90.135 of our Rules requires that licenses be modified upon changes in the number of base stations or fixed, control or mobile transmitters from that authorized. Coordinators obtain copies of these modified licenses and thus they have access to current end user information. Even with the proposed changes regarding our license modification requirements, coordinators will have the necessary information on channel usage to enable them to recommend appropriate channels. Thus, we propose to eliminate the end user list requirements.

3. Section 90.135 of the Commission's Rules outlines the various changes in licensed facilities that now require the filing of license modifications, including that a licensee must modify its license when there is a change in the number of base stations, fixed, control or mobile transmitters (§ 90.135(a)(5)) or when there is a change of 50 paging receivers (§ 90.135(a)(8)). This 50 pager threshold is not appropriate for operations on paging-only channels, where transmissions are very brief, and thus accommodate a much higher number of pagers yet still maintain service quality. Private carrier systems providing operating on paging-only channels may add hundreds of units per week. Therefore, we propose to require systems operating on paging-only channels to modify their licenses when the number of pagers increases or decreases by 35%. Also, given that it is our current practice to uniformly grant applications to add paging units, in the alternative, we ask whether there is any need, after the initial licensing of systems on paging-only channels, for a modification of a system's license to authorize a change in the number of paging units. In this context, we also ask whether a signalling standard for systems operating on paging-only channels is warranted. In other words, rather than requiring licensees merely to indicate the changes in the number of users, a better approach might be to establish some measure of channel occupancy that would take into account both the number of users and the amount of time each user is on a channel.

4. With the exception of licensees of systems operating on paging-only channels, and licensees of systems that are not licensed on exclusive assignments in the 470–512 MHz band or on conventional channels above 800 MHz, we propose that all licensees be

required to modify their licenses only when their number of mobiles increases or decreases by 20% from that authorized. The current rule requiring license modification even when there is a change of only one or two mobiles is unnecessary and burdensome. We believe a 20% benchmark figure represents a significant change in operation warranting modification of the Commission's and the coordinator's data base. Additionally, comment is sought on whether the 20% benchmark figure also should apply to two-way systems with paging receivers. Finally, commenters are invited to address whether, as an alternative, a change in the number of mobile units or pagers need only be authorized at the time of license renewal. In this context, we also question whether frequency coordination by certified coordinators, when there in only an increase in the number of mobiles or pagers, is necessary. It would appear that a more expeditious procedure would be to allow licensees to file their applications for license modification for an increase in the number of authorized mobiles or pagers directly with the Commission.

Initital Regulatory Flexibility Analysis

1. Pursuant to the Regulatory Flexibility Act of 1980, an initial regulatory flexiblity analysis has been prepared. It is available for public viewing as part of the full text of this decision which may be viewed at the Commission's offices or obtained from its copy contractor.

List of Subjects in 47 CFR Part 90

Private land mobile radio services, End user information, Shared systems, Mobile information, Radio

Amendatory Text

It is proposed to amend 47 CFR part 90, as follows:

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, 332, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.135 would be amended by revising paragraphs (a)(5) and (a)(8) to read as follows:

§ 90.135 Modification of license.

(a) * * *

(5) Change in the location or number of base stations of fixed or control transmitters from that authorized; change in the number of mobile transmitters for systems that are not licensed on exclusive assignments in the 470–512 MHz band or on conventional channels above 800 MHz; change by 20 percent in the number of mobile transmitters from that authorized; or change in the area of mobile operations from that authorized.

* * * * *

(8) Change of 35 percent in the number of paging receivers from that authorized for systems licensed on paging-only channels.

* * * * *

3. Section 90.159 would be amended by revising paragraph (c) to read as follows:

§ 90.159 Temporary and conditional permits.

* * * * *

(c) An applicant proposing to operate an itinerant station, or an applicant seeking license modification solely for an increase in the number of mobile units, (except for systems on frequencies in the 470–512 MHz band or conventional channel assignments above 800 MHz), or an applicant seeking the assignment of authorization or transfer of control of a license for an existing station operating below 470 MHz or in the 929–930 MHz band, may operate the subject station during the pendency of the application for a period not to exceed 180 days under a conditional permit upon the filing of a properly completed formal application that complies with § 90.127. Conditional authority ceases immediately if the application is returned by the Commission because it is not acceptable for filing. All other categories of applications listed in 90.175(f) that do not require evidence of frequency coordination are excluded from the provisions of this rule section.

* * * * *

4. Section 90.175 would be amended by adding paragraph (f)(7) to read as follows:

§ 90.175 Fequency coordination requirements.

* * * * *

(f) * * *

(7) Applications for modification of license that involve a change in the number of mobile or paging transmitters from that authorized as required by § 90.135 (a)(5) and (a)(8), provided that there is no change in the technical parameters (e.g., frequency, type of emission, power, antenna height, location or number of base stations or fixed or control transmitters, or area of mobile or paging operations) of the existing system, and the existing system is not licensed in the 470–512 MHz band or on 800 MHz conventional channels.

* * * * *

§ 90.179 [Amended]

5. Section 90.179 would be amended by removing paragraph (e) and redesignating paragraphs (f) and (g) as (e) and (f), respectively.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–10928 Filed 5–8–92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 92–79; FCC 92–172]

Elimination of Separate Licensing of End Users of Specialized Mobile Radio Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a notice of proposed rulemaking soliciting public comment on elimination of separate licensing of end users of Specialized Mobile Radio systems and amendment of loading reporting requirements in order to reduce regulatory burden and increase efficiency in the industry and at the agency.

DATES: Comments must be filed on or before June 11, 1992, and reply comments must be filed on or before June 26, 1992.

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

FOR FURTHER INFORMATION CONTACT: Linda L. Haller, (202) 632–6497, Private Radio Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rulemaking, PR Docket No. 92–79, FCC 92–172, adopted April 9, 1992 and released May 5, 1992. (Notice). The full text of the notice is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street, NW., Washingotn, DC. The full text also may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC, 20036, telephone (202) 452–1422. The following collection of information contained in these proposed rules has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of the submission may be purchased from the Commission's copy contractor, Downtown Copy Center,

1114 21st Street, NW., Washington, DC 20036, telephone (202) 452–1422. Persons wishing to comment on this collection of information should direct their comments to Jonas Niehardt, (202) 395–4814, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503. A copy of any comments filed with the Office of Management and Budget also should be sent to the Federal Communications Commission, Office of Managing Director, Paperwork Reduction Project, Washington, DC 20554. For further information contact Judy Boley, Information Resources Branch, Office of Managing Director, Federal Communications Commission, (202) 632–7513.

OMB Number: None.

Title: Amendment of part 90 of the Commission's Rules to Eliminate Separate Licensing of End Users of Specialized Mobile Radio Systems.

Action: New collection.

Respondents: State or local governments, businesses or other for-profit entities, non-profit institutions, and small businesses or organizations.

Estimated Annual Burden: It is estimated that 1,909 applications will be filed annually and that it will take 30 minutes per application to provide the requisite loading figure, which equals 955 burden hours.

Estimated Frequency of Response: On occasion.

Needs and Uses: Loading data is needed to ensure spectrum usage by requiring applicants to provide justification for frequency assignment.

Summary of Report and Orders

1. The Federal Communications Commission (Commission) initiates this proceeding to reexamine its licensing and mobile loading reporting requirements in the Specialized Mobile Radio service. Specialized Mobile Radio systems (SMRs) are private two-way land mobile radio stations authorized in the 806–821/851–866 and 896–901/935–940 MHz bands. SMRs may be trunked systems, which automatically locate available channels for communiction, or conventional systems, which require users to manually search for an open channel or wait until a particular channel becomes available for use. Operators of trunked SMRs are licensed on an exclusive basis and retain control over their frequencies if applicable mobile loading standards are met. Conventional SMRs are authorized on the basis of a minimum of 70 mobile stations per channel and licensees that meet the loading standard are entitled to exclusive use of their channels.

2. Currently, the Commission licenses both SMR operators and their customers. The Commission believes that it is onerous and unnecessary to continue to license the SMR customers. Specifically, the Commission proposes to eliminate § 90.655 of our rules, 47 CFR § 90.655, which requires SMR customers to license their associated control points, control stations, and mobile radio stations. Removing customer licensing would save thousands of end users the time, money and resources required to prepare and file applications, and would reduce substantially Commission costs in processing applications and issuing licenses. The Commission proposes to allow SMR operators to function under a blanket license issued to an SMR base station licensee. The base station licensee would be responsible for ensuring that use of its system complies with applicable federal laws, including the Communications Act, Commission Rules, Federal Aviation Administration requirements and the National Environmental Policy Act. The Commission requests comments on these proposals.

3. The Commission also proposes to eliminate § 90.651(a) of its rules, 47 CFR § 90.651(a), which requires existing base station licensees of trunked SMR systems to submit mobile loading annually and at renewal. Instead, the Commission proposes to require loading data only when (a) an existing licensee of a trunked system applies for additional channels to expand an existing system or to construct a new system within 40 miles of its existing system, or (b) an existing licensee of a trunked system in a waiting list area applies for renewal of a system licensed before June 1, 1993. The Commission further proposes that loading data be computed based on the business records of licensees of trunked SMRs for the six-month period preceding its application. The Commission request comment on its proposals and solicits industry opinion on the method and type of business records that licensees should use to determine loading.

4. Finally, the Commission proposes to exempt licensees of trunked SMRs from the requirement under § 90.135(a)(5) of its rules, 47 CFR 90.135(a)(5), to modify their licenses when there is a change in the location or number of fixed, control or mobile transmitters. The Commission requests comment on its proposal.

Initial Regulatory Flexibility Analysis

5. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IFRA) of the expected impact on small entities of the proposals contained in the notice.

A. Reason for Action

6. The Commission proposes to discontinue separate licensing of Specialized Mobile Radio system end users in order to eliminate a substantial burden on the public, to reduce administrative costs and to improve government efficiency. The Commission also proposes to require Specialized Mobile Radio base station licensees to be responsible for compliance with applicable Federal Rules and to require licensees of trunked Specialized Mobile Radio systems to submit loading data to the Commission to qualify for authorizations of additional channels and for renewal of systems in waiting list areas authorized before June 1, 1993.

B. Objectives

7. The Commission seeks to reexamine our licensing and mobile loading reporting requirements in the Specialized Mobile Radio Service in order to reduce unnecessary reporting burdens on industry and administrative costs to the Commission and thereby increase efficiency in the Specialized Mobile Radio industry and within the agency.

C. Legal Basis

8. The proposed action is authorized under section 4(1), 303(g), 303(r), and 331(a) of the Act, 47 U.S.C. 154(i), 303(g), 303(r), and 332(a) (1988).

D. Reporting, Recordkeeping and Other Compliance Requirements

9. End users of Specialized Mobile Radio systems no longer would be required to file applications or obtain licenses from the Commission. Base station licensees of trunked and conventional Specialized Mobile Radio systems would be responsible for assuring that end users comply with applicable Federal requirements. Base station licensees of trunked Specialized Mobile Radio systems would be required to maintain records of the number of mobiles loaded on their systems and to submit that data to the Commission when applying for authorizations for which channel loading is a prerequisite. In addition, licensees of trunked Specialized Mobile Radio systems would be exempt from the current requirement to file applications to modify their licensees based on a change in the location or number of control or mobile transmitters.

E. Federal Rules Which Overlap, Duplicate or Conflict With These Rules

10. None.

F. Description, Potential Impact, and Number of Small Entities Involved

11. The proposals would discontinue end user licensing, which would eliminate the time and expense currently required by end users and the Commission to process applications and license end users. Under our Rules, base station licensees of Specialized Mobile Radio systems currently are required to demonstrate loading and they often assist end users in preparing end user applications. Our proposal would require base station licensees of trunked Specialized Mobile Radio systems to submit loading data to qualify for additional channels or to renew licenses of trunked systems authorized before June 1, 1993, but would exempt them from the requirement to file applications to modify their licenses based on a change in the location or number of control or mobile transmitters.

G. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

12. None.

List of Subjects in 47 CFR Part 90

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Proposed Rule Changes

Part 90 of chapter 1 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 90—[AMENDED]

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, 331, 48 Statutes, as amended, 1066, 1082; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

§ 90.651 [Amended]

2. Section 90.651(a) is removed and reserved.

§ 90.655 [Removed]

3. Section 90.655 is removed.

4. A new § 90.656 is added to read as follows:

§ 90.656 Responsibilities of base station licensees of Specialized Mobile Radio systems.

(a) The licensees of base stations that provide Specialized Mobile Radio service on a commercial basis for the use of individuals, Federal government agencies, or persons eligible for licensing under either subparts B, C, D, or E of this part shall be responsible for exercising effective operational control over all mobile stations that communicate with the base station. The base station licensee shall be responsible for assuring that its system is operated in compliance with all applicable rules and regulations.

(b) Customers that operate mobile units on a particular Specialized Mobile Radio system shall be licensed to that system. A customer that operates temporarily on more than one system will be deemed, when communicating with the other system, to be temporarily licensed to the other system and for that temporary period, the licensee of the other system shall assume the same licensee responsibility for the customer's mobile station(s) as if the customer's stations were licensed to that other system.

5. A new § 90.658 is added to read as follows:

§ 90.658 Loading data required for base station licensees of trunked Specialized Mobile Radio systems to acquire additional channels or to renew trunked systems licensed before June 1, 1993.

(a) A base station licensee of a trunked Specialized Mobile Radio system that applies for additional channels to expand an existing system or to construct a new system within 40 miles of its existing system, or a base station licensee of a trunked system in a waiting list area that applies for renewal of a system licensed before June 1, 1993 must identify on the appropriate application form the number of mobiles and control stations loaded on its system as calculated in paragraph (b) of this section.

(b) The number described in paragraph (a) of this section must be calculated according to the average number of mobiles and control stations operating on a licensee's system on the first business day of each of the six months immediately preceding the filing of an application and must be based on the licensee's business records for that period.

(c) Business records may constitute invoices, customer service agreements, customer lists or any other type of record kept in the ordinary course of business.

(d) The FCC will use the loading data required by this section to determine whether the licensee's existing system has a sufficient number of mobiles as required by our rules to qualify for additional channels or for renewal of trunked systems licensed before June 1, 1993.

6. A new § 90.659 is added to read as follows:

§ 90.659 Change in number or location of base stations or transmitters.

(a) Licensees of trunked Specialized Mobile Radio systems are exempt from the requirement under § 90.135(a)(5) to file an application for modification of license when there is a change in the location or number of fixed, control, or mobile transmitters from that authorized, including area of mobile operations.

(b) Licensees of conventional Specialized Mobile Radio channels are not exempt from the requirement under § 90.135(a)(5) to file an application for modification of license when there is a change in the location or number of fixed, control, or mobile transmitters from that authorized, including area of mobile operations.

(c) Licensees of trunked and conventional Specialized Mobile Radio systems are not exempt from the requirement under § 90.135(a)(5) to file an application for modification of license when there is a change in the location or number of base stations.

[FR Doc. 92-10925 Filed 5-8-92; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1023

[Ex Parte No. MC-100 (Sub-No. 6)]

Single State Insurance Registration

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is requesting the trucking industry, State regulatory agencies, and other interested parties to participate in the formulation of revised regulations. Consistent with Congress's mandate it is the Commission's objective to implement new statutory provisions that replace the present system of registering interstate operating authority with a single State insurance registration system.

DATES: Comments are due by June 10, 1992.

ADDRESSES: The original and 10 copies of comments referring to Ex Parte No. MC-100 (Sub-No. 6) should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Schwartz, (202) 927-5316 or

Richard B. Felder, (202) 927-5610, [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: On December 18, 1991, the President signed into law the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 1914 (1991). Section 4005 of the Act significantly amends 49 U.S.C. 11506—Registration of motor carriers by a State. The new law, at 49 U.S.C. 11506(c)(1), requires that, not later than 18 months after its enactment, the Commission prescribe amendments to the regulations governing the existing registration system. The present regulations are codified at 49 CFR part 1023.

At the heart of the present system is the so-called "bingo card" program. In essence, under the regulations, each State may require carriers annually to apply for the issuance of identifying numbers and/or stamps for each vehicle the carriers intend to operate within the borders of that State during the coming year. Each State participating in the program must issue identification stamps or numbers that the carriers must place in squares on the back of uniform identification cab cards that must be maintained in the cab of the vehicle for which the identification stamp or number has been issued.

Congress has determined that the "bingo card" program is inefficient and has been an administrative burden on the trucking industry and the States. Therefore, in Section 4005, Congress acted to benefit interstate carriers and, ultimately, the public by replacing the present bingo card program with a simplified insurance registration system. States no longer may require carriers to register or identify specific vehicles operated.

Amended section 11506 mandates a single State registration system under which a carrier: (a) Files proof of insurance with a single "registration State;" (b) pays the registration State fees that are subject to allocation among all States in which the carrier operates and which participate in the system; and (c) keeps in each of its commercial vehicles a copy of a receipt issued by its registration State. The new law allows participation only by State that, as of January 1, 1991, charged or collected a fee for a vehicle identification stamp or number, and it prohibits the charging of fees other than for filing of proof of insurance.

Accordingly, we are initiating this rulemaking proceeding to formulate amended regulations to govern the registration of interstate motor carriers by the States, and we are requesting the trucking industry, the State regulatory utility agencies, the National Association of Regulatory Utility Commissioners (NARUC), and other interested parties to participate in the process.

Our initial consideration of the new statute suggests several matters that will have to be resolved for us to develop the regulations. The Commission must explore the manner in which carriers will select their registration States and the roles that the carriers and the States will play in the selection process.

We also are considering the matters of what information a registration State may or must require a carrier to file and the method and timing of payments a carrier must make. Further, we are examining the questions of what constitutes "required insurance" and "satisfactory proof" of such insurance.

The Commission also is considering the manner in which carriers are to be required to file with their registration States. Further, we are exploring questions relating to the form and issuance of the receipts registration States are to issue and the copies of receipts carriers are to keep in each of their commercial vehicles. We also are examining methods of calculating the required fees and allocating them among the participating States. In addition, we are requesting commentors to bring to our attention and propose dispositions and resolutions of any matters of concern that we may have failed to identify.

Parties desiring to participate should submit written views and proposals. In making their proposals, the parties should be guided by the Congressional goals of eliminating unnecessary compliance burdens and establishing a simple, efficient insurance registration program.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927-7428. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

Environmental and Energy Considerations.

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Initial Regulatory Flexibility Analysis

Pursuant to 5 U.S.C 603, the Commission is required to examine specifically the impact of a proposed action on small entities. We preliminarily conclude that amendment of the subject rules will have a significant positive impact on such entities, within the meaning of the statute.

The registration system imposed by the existing regulations has been found to be inefficient and administratively burdensome to the States and the trucking industry. Consistent with the legislative directive, it is our objective to promulgate amended rules that facilitate implementation of the streamlined administrative process envisioned by the new law and thereby to eliminate unnecessary compliance burdens for all carriers, large and small.

We specifically request commentors to keep the stated objective in mind in making their proposals and to comment on the issue of economic impact on small entities in order to assist us in making findings in this area.

List of Subjects in 49 CFR Part 1023

Insurance, Motor Carriers, Surety Bonds.

Notice is given under the authority of 49 U.S.C. 10321 and 11506 and 5 U.S.C. 553.

Decided: April 29, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 92-10952 Filed 5-8-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Threatened Status for the Mexican Spotted Owl (Strix occidentalis lucida)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period is reopened on the proposed rule to list the Mexican spotted owl (*Strix occidentalis lucida*) as a threatened species. The Forest Service is reassessing its timber management activities which is important to the future status of the Mexican spotted owl. A draft

environmental impact statement, authored by the U.S. Forest Service will be available approximately April 1992 (57 FR 7907). In addition, seven counties in New Mexico and one county in Arizona have requested an extension of the comment period. The reopening of the comment period will allow all interested parties to submit comments on the proposal.

DATES: The comment period for this proposal will be reopened on May 11, 1992, and will close on September 1, 1992. Comments must be received by the closing date. Any comments that are received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: Comments and materials should be sent to the Field Supervisor, Ecological Services Field Office, U.S. Fish and Wildlife Service, 3530 Pan American Freeway, Suite D, Albuquerque, New Mexico, 87107. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Buck Cully at the above address (505/883–7877 or FTS 474–7877).

SUPPLEMENTARY INFORMATION:

Background

The Mexican spotted owl is most abundant in forests in New Mexico and Arizona, but is also found in Colorado, Texas, Utah, and Mexico. This owl most often inhabits forested mountains and canyons containing dense, uneven-aged, multistoried forests with a closed canopy. The estimated total population of Mexican spotted owls in 1990 was 2,160. Threats to this species include loss of habitat from logging and fires, increased predation associated with habitat fragmentation and lack of protective regulation. A proposed rule to list this species as threatened was published in the **Federal Register** (56 FR 56344) on November 4, 1991. The Service must receive all comments by September 1, 1992. Comments should be submitted to the Service at the office listed in the **ADDRESSES** section above.

Author

The primary author of this notice is Lorena L.L. Wada, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico, 87103, (505/766–2914 or FTS 474–2914).

Authority

The authority citation for this action is 16 U.S.C. 1533; 50 CFR 424.16 (c)(2).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Reporting and recordkeeping requirements, and Transportation.

Dated: April 27, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–10982 Filed 5–8–92; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 57, No. 91
Monday, May 11, 1992

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.

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the Alaska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Alaska Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 3 p.m. on May 28, 1992, at the Anchorage Hilton, 500 West 3rd Avenue, Anchorage, Alaska 99501. The purpose of the meeting is to plan Committee projects and future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson, Rosalee Walker or Philip Montez, Director of the Western Regional Divison (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commision.

Dated Washington, DC, May 5, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordiniation Unit.

[FR Doc. 92–10957 Filed 5–8–92; 8:45 am]

BILLING CODE 6335–01–M

Agenda and Public Meeting of the New Mexico and Texas Advisory Committees

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U. S. Commission on Civil Rights, that the New Mexico and Texas Advisory Committees to the Commission will convene at 8:30 a.m. and ajourn at 6 p.m. on June 12, 1992, at the El Paso Convention Center (Juarez Room), 1 Civic Center Plaza, El Paso, Texas 79901. The purpose of the meeting is to collect information concerning border-related civil rights issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairpersons, Adolph Canales and Emma Armendariz or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 5, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92–10956 Filed 5–8–92; 8:45 am]

BILLING CODE 6335–01–M

Agenda and Public Meeting of the Oklahoma Advisory Committee

Notice is hereby given, pursuant to the provision of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Oklahoma Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4 p.m. on June 4, 1992, at the Hilton Inn West, 401 South Meridian, Oklahoma City, Oklahoma 73108. The Committee will discuss civil rights issues and plan future projects in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson, Dr. Earl Mitchell or Philip Montez, Director of the Western Regional Divison (213) 984–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 5, 1992.

Carol-Lee Hurely,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92–10958 Filed 5–8–89; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Office of the Secretary

Privacy Act of 1974; Altered System of Records

AGENCY: Office of the Secretary, Commerce.

ACTION: Notice; request for comments.

SUMMARY: This notice announces the Department's proposal to alter an existing system of records under the Privacy Act. The system is entitled, "COMMERCE/CENSUS–3, Individual and Household Statistical Surveys and Special Studies." This notice is submitted in accordance with the requirements of the Privacy Act, 5 U.S.C. 552a, and OMB Circular A–130, appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals."

EFFECTIVE DATE: The alteration of this system of records will be effective July 10, 1992, unless Commerce receives comments that would result in a contrary determination.

ADDRESSES: Please address comments to: M. Catherine Miller, Chief, Program and Policy Development, room 2430, Bureau of the Census, Washington, DC 20233. Comments received will be available for public inspection at this same address from 8:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Betty Ford: 301–763–7825.

SUPPLEMENTARY INFORMATION: The Bureau of Census is altering an existing Privacy Act System of Records.

This alteration is in response to a Department of Justice annual reporting requirement and information function as codified by 42 U.S.C. 5617 and 5652. The Census Bureau will collect and tabulate identifiable data for the Juveniles Taken Into Custody survey. The data are received from state and local units of government responsible for the custody of juvenile offenders. The tabulated data will be furnished to the Department of Justice, Office of Juvenile Justice and

Delinquency Prevention (OJJDP) solely for statistical purposes. Public use products do not contain data that could identify any particular individual.

Since the data collection referred to in this notice is a reimbursable survey conducted by Census for the Justice Department, Justice will obtain the necessary clearance from the Office of Management and Budget for the information collection.

As instructed in OMB Circular A-130, appendix I, the Department's Report has been filed with Congress and the Office of Management and Budget.

The altered system, "COMMERCE/CENSUS-3, Individual and Household Statistical Surveys and Special Studies Records," will read as follows.

Proposed System Notice

COMMERCE/CENSUS-3

SYSTEM NAME:

Individual and Household Statistical Surveys and Special Studies Records—COMMERCE/CENSUS-3.

SYSTEM LOCATION:

Bureau of the Census, Federal Building 3, Washington, DC 20233; and Bureau of the Census, 1201 East 10th Street, Jeffersonville, Indiana 47103; and National Archives and Records Service, Washington National Records Center, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals designated for statistical sample surveys and special studies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Age, sex, race, education, marital status, residence, family income, birth expectations, employment, ethnic origin, relationship to head of household, mobility status, and similar social, economic, and demographic characteristics of individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 17012-1, 2(f) and 2(g); 13 U.S.C. 6, 8, 9, 41, 89, 101, 141, 181, 195, and 301; 15 U.S.C. 772; 16 U.S.C. 742d (4) and (5); 23 U.S.C. 134, 307, and 307a; 29 U.S.C. 1 and 9; 31 U.S.C. 686; 42 U.S.C. 242c, 242k, 282(5), 902, 1395 11(a), 1862, 2825, 3732, 5617, and 5652; and 49 U.S.C. 1605.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Identifiable data from records not protected by 13 U.S.C. 9, received from state and local units of government responsible for administering Comprehensive Employment and Training Act funds and from individual respondents pursuant to the Longitudinal Manpower Survey authorized by 29 U.S.C. 881(c) and 883 may be furnished to the Social Security Administration solely for the purpose of obtaining further identifiable data for statistical use in the survey. The data provided are: Social Security Number, name, month and year of birth, race, and sex. No determinations affecting individual respondents are made as a result of this routine use.

(2) Identifiable data from records not protected by 13 U.S.C. 9, received from state and local units of government responsible for the custody of juvenile offenders may be furnished to the Department of Justice, Office of Juvenile Justice and Delinquency Prevention. The data will be used solely for statistical purposes.

(3) Publications resulting from the use of the records in this system do not contain data that could identify any particular establishment or individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper copy, punch card, magnetic tape, microfilm, microcomputer floppy disk, and hard disk.

RETRIEVABILITY:

Unique serial identification numbers internal to the Bureau of the Census.

SAFEGUARDS:

All employees are subject to the restrictions, penalties, and prohibitions of Title 13, United States Code. Employees are also regularly advised of the regulations issued pursuant to Title 13, United States Code, governing the confidentiality of the data.

RETENTION AND DISPOSAL:

Retention and disposal practices are in accordance with approved GSA schedules. Generally, records are retained for periods of 5 to 7 years, unless a longer period is necessary for statistical purposes or for permanent archival retention.

SYSTEM MANAGER(S) AND ADDRESS:

Privacy Officer, Program and Policy Development Office, Bureau of the Census, Washington, DC 20233.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(4), this record is exempted from the notification, access, and contest requirements of the agency procedures (under 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G), (H), (I), and (f)). This exemption is applicable as the data are maintained by the Bureau of the Census solely as statistical records as required under Title 13, United States Code, and are not used in whole or in part in making any determination about an identifiable individual.

Dated: May 1, 1992.

Otto J. Wolff

Deputy Assistant Secretary for Administration.

[FR Doc. 92-10906 Filed 5-8-92; 8:45 am]

BILLING CODE 3510-07-M

Bureau of Export Administration

[Docket No. AB-1-91]

Wescot International, Inc., Respondent

Order

On April 17, 1992, Acting Under Secretary for Export Administration Joan M. McEntee entered a Final Order in the above-captioned matter imposing a civil penalty of $10,000 on Westcot International, Inc. and denying Wescot's export privileges for a period of ten years. Action Affecting Export Privileges; Westcot International, Inc. 57 FR 14825 (April 23, 1992). That Final Order makes it clear that the denial period is to run from the date thereof. Through inadvertence, the Final Order does not, however, state the date upon which the civil penalty is due.

In view of the foregoing, I hereby order that the $10,000 civil penalty imposed in the April 17, 1992 Final Order in the above-captioned matter shall be due, in accordance with the attached instructions, within 30 days of the date of this Order.

Entered this 4th day of May, 1992.

Joan M. McEntee,

Acting Under Secretary for Export Administration.

INSTRUCTION FOR PAYMENT OF CIVIL PENALTY

1. The civil penalty check should be made payable to: U.S. Department of Commerce.

2. The check should be mailed to: U.S. Department of Commerce, Bureau of Export Administration, Office of Budget and Financial Management, Room H-4520, 14th Street and Constitution Avenue, NW., Washington, DC 20230, Attn: Victor Micit.

[FR Doc. 92-10905 Filed 5-8-92; 8:45 am]

BILLING CODE 3510-DT-M

Patent and Trademark Office

Public Advisory Committee for Trademark Affairs; Meeting

AGENCY: Patent and Trademark Office.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the open meeting of the Public Advisory Committee for Trademark Affairs.

DATES: The Public Advisory Committee for Trademark Affairs will meet from 10 a.m. until 4 p.m. on June 9, 1992.

PLACE: U.S. Patent and Trademark Office, 2121 Crystal Drive, Crystal Park 2, room 912, Arlington, Virginia.

STATUS: The meeting will be open to public observation; seating will be available for the public on a first-come-first-served basis. Members of the public will be permitted to make oral comments of three (3) minutes each. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed. Copies of the minutes will be available upon request.

MATTERS TO BE CONSIDERED: The agenda for the meeting is as follows:

(1) Finance.
(2) Automation.
(3) Strategic Planning.
(4) Current Trademark Office Practice Issues.
(5) International Trademark Law.

CONTACT PERSON FOR MORE INFORMATION: For further information, contact Lynne Beresford, Office of the Assistant Commissioner for Trademarks, Building CPK2, room 910, Patent and Trademark Office, Washington, DC 20231. Telephone: (703) 305–9464.

Dated: May 5, 1992.

Fred E. McKelvey,

Acting Commissioner of Patents and Trademarks.

[FR Doc 92–10947 Filed 5–8–92; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Proposed Additions and Deletion Correction

In notice document 92–9082, appearing on page 13715 in the issue of Friday, April 17, 1992 the nonprofit agencies listed (in the third column) to produce the plastic bags (NSNs 8105–01–195–8730 and 8105–01–183–9768/9) should be as follows: Wichita Industries and Services for the Blind, Wichita, Kansas at the following facilities: Pittsburg, Kansas, Kansas City, Kansas.

Beverly L. Milkman

Executive Director.

[FR Doc. 92–10944 Filed 5–8–92; 8:45 am]

BILLING CODE 6820–33–M

CONSUMER PRODUCT SAFETY COMMISSION

Commission's Long Range Plan; Public Hearing

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public hearing.

SUMMARY: The Commission will hold a public hearing to solicit views from all interested persons concerning its long-range plan. The Commission is developing a long-range plan for the agency that will focus on how the agency can best operate in the 1990's. The Commission desires public input in this endeavor and requests that interested persons present their views on the issues outlined below.

DATES: The hearing will be held at 10 a.m. on June 18, 1992. Written comments will be accepted until June 4, 1992. Requests from members of the public desiring to make oral presentations must be received by the Office of the Secretary not later than May 28, 1992. Persons desiring to make oral presentations at this hearing must submit a written text or summary of their presentation not later than June 4, 1992.

ADDRESSES: The hearing will be held in room 556 of the Westwood Towers Building, 5401 Westbard Avenue, Bethesda, Maryland. Written comments, requests to make oral presentations, and texts or summaries of oral presentations should be captioned "Long Range Planning Hearing" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to room 420, 5401 Westbard Avenue, Bethesda, Maryland 20816.

FOR FURTHER INFORMATION CONTACT: Sheldon Butts, Deputy Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800; telefax (301) 504–0783.

SUPPLEMENTARY INFORMATION:

A. Introduction

The Consumer Product Safety Commission (Commission or CPSC) is developing a long-range plan for the agency. The goal of this effeort is to consider the mission of the agency, its current operations, and its optimal future operations, and then to develop a comprehensive plan for the Commission in the 1990's. As part of this process, the Commission seeks the public's input on how the CPSC can operate most effectively in the future. At the public hearing, the Commission will not be focusing on specific hazards or projects, but rather on the broader issue of how the agency should operate in the future. (Currently, as part of its annual budget development process, the Commission solicits views from the public on CPSC's agenda and hazard or project priorities through a public hearing and receipt of written comments). This notice lists particular topics which the Commission asks the public to address at the long range plan public hearing.

B. Background

The Commission was established by the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051–2084, which was enacted in 1972. In 1992, the CPSC has a staff of 515 and an annual budget of $40.2 million. It is an independent Federal agency with jurisdiction over a variety of products. With notable exclusions, a "consumer product" is defined as an article produced or distributed for sale to, or the use of, a consumer in or around a residence, a school, in recreation, or otherwise. The Commission does not have jurisdiction over products covered by other Federal agencies, such as cars and trucks, pesticides, boats, food, drugs, or cosmetics or over alcoholic beverages, tobacco, or firearms. 15 U.S.C. 2052(a)(1). Some of the products and product areas the Commission has dealt with in the past include toys and children's products, electrical appliances, lawnmowers, bicycles, lead in paint, child drowning, and mattress flammability.

The general purpose of the agency envisioned by the CPSA is to protect the public against unreasonable risks of injury associated with consumer products. Additional specific purposes include assisting consumers in evaluating the comparative safety of consumer products, developing uniform safety standards for consumer products, and promoting research and investigation into product-related deaths and injuries. 15 U.S.C. 2051(b). Congress also transferred to the Commission authority to administer and enforce the Federal Hazardous Substances Act (15 U.S.C. 1261–1277); the Flammable Fabrics Act (15 U.S.C. 1191–1204); the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1472–1476); and the

Refrigerator Safety Act (15 U.S.C. 1211–1214).

Under the authority of these statutes, the CPSC collects and analyzes product-safety-related data, disseminates public information, promulgates standards and bans, initiates corrective actions regarding particular product hazards, and works with a variety of public and private organizations concerned with product safety.

C. The Public Hearing

The public hearing will be an opportunity for interested persons to present their views on how the CPSC can operate most effectively in the 1990's. The Commission would like participants to discuss the experiences and safety needs of the organizations they represent and how the Commission can address those needs most effectively.

In its long-range planning efforts, the Commission is focusing on how the Commission can most effectively fulfill its mission of reducing unreasonable risks of consumer-product-related injuries in the 1990's. Some of the issues and trends affecting the Commission's operation in the 1990's include limited budgets throughout government, globalization of product markets, increasing health care costs, increased diversity in populations, and a growing demand for product safety. The Commission asks the hearing participants to address how these and other trends might affect the Commission.

In particular, the Commission asks interested persons to address the following topics:

1. New consumer products likely to appear in this decade, and the risks they are likely to pose.
2. New injury prevention technologies, *e.g.*, smoke detectors.
3. Changes likely in the populations at risk, *i.e.*, should the Commission focus on the elderly, children, low income or minority populations.
4. Changes in how products are produced or marketed.
5. Changes in how products are used or in consumer habits.
6. Changes in methods of communication, advertising, and media coverage.
7. The expanding global market for products.
8. Opportunities for CPSC to work with private and other public organizations to leverage its impact.

Persons who would like to make oral presentations at the hearing should call or write Sheldon Butts, Deputy Secretary, at the location listed in the address section above, not later than May 28, 1992.

Presentation should be limited to ten minutes. Persons intending to make presentations must submit the written text or a summary of their presentation to the Office of the Secretary not later than June 4, 1992.

The Commission reserves the right to impose further time limitations or other restrictions to avoid duplication of presentations. The hearing will begin at 10 a.m. on June 18, 1992, and may continue to the following day if necessary.

Dated: May 6, 1992.

Sheldon D. Butts,

Deputy Secretary, Consumer Product Safety Commission.

[FR Doc. 92–10994 Filed 5–8–92; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Directorate of Personal Property—Intransit Visibility Service; Notice

AGENCY: Military Traffic Management Command (MTMC), DOD.

ACTION: Notice, Directorate of Personal Property—Intransit Visibility Service.

SUMMARY: There are some circumstances wherein MTMC may need to monitor the movement progress of certain shipments of personal property through various transit points. To compensate carriers for the costs involved in providing shipment movement data, the following will be added to the Personal Property Traffic Management Regulation (PPTMR), DOD 4500.34–R, Appendix A, Tender of Service, as a new paragraph 26. Present paragraphs 26 through 62 should be renumbered accordingly.

"Intransit Visibility Service. When requested by HQMTMC, I will provide intransit visibility services (ITV) on a specified shipment or series of shipments. ITV service is defined as monitoring and reporting movement progress of shipment(s) through various transit points, such as: departure from origin agent; arrival at destination; movement from origin port to destination port; destination port to final destination. Reports, containing specific data in the format requested, i.e., member's name, rank, social security number, branch of service, required delivery date, pieces/weight/cub, present location of shipment, and projected movement date, etc., will be submitted to HQMTMC, ATTN: MTPP–QO, 5611 Columbia Pike, Falls Church, Virginia 22041–5050. Payment for ITV service will be in accordance will the applicable rate solicitation. This service may be billed on a SF 1113 to the appropriate finance office. A copy of the HQMTMC directive requesting the ITV service must accompany the SF 1113. I understand this item is not applicable to HQMTMC requests for a listing of shipments frustrated intransit by a carrier ceasing operations because of bankruptcy, financial problems, or similar situations."

DATES: This item is effective immediately and will be included in the next printed change to the PPTMR, DOD 4500.34–R.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara Yarbrough at (703) 756–1654, HQMTMC, ATTN: MTPP–QO, room 423, 5611 Columbia Pike, Falls Church, VA 22041–5050.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–10875 Filed 5–8–92; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

CNO Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Technology Surprise Task Force will meet May 29, 1992, from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to discuss the possibility of unexpected technology breakthroughs that vastly change warfighting capabilities. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(b)(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, Telephone (703) 756-1205.

Dated: April 29, 1992.

Wayne T. Baucino

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92-10915 Filed 5-8-92; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF ENERGY

Savannah River Field Office (SR), Financial Assistance Award; Intent To Award a Noncompetitive Grant

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive award of grant.

SUMMARY: The DOE announces that it plans to award a renewal grant to Claflin College, Orangeburg, South Carolina, for the conduct of a Student Science Enrichment Training Program, with special emphasis on chemical and computer science fields. The grant will be awarded for a three-year period with DOE support of $163,909. Pursuant to § 600.7(b)(2)(i)(A) of the DOE Assistance Regulations (10 CFR part 600), DOE has determined that the activity to be funded is necessary for the satisfactory completion of an activity presently being funded by DOE and eligibility for this grant award shall be limited to Claflin College.

FOR FURTHER INFORMATION CONTACT: Beth O'Rear, Prime Contracts and Financial Assistance Branch, Contracts Division, U.S. Department of Energy, Savannah River Field Office, P.O. Box A, Aiken, SC 29802, Telephone: (803) 725-1345.

SUPPLEMENTARY INFORMATION:

Procurement Request Number

09-92SR18048.001.

Project Scope

For the past four summers, Claflin College has conducted a Student Science Enrichment Training Program for thirty participants selected from a pool of applicants, generated by the high school sophomore, junior and senior classes as well as the freshmen class at Claflin. The program primarily focused on high ability students with potential for science, mathematics and engineering careers. The program placed emphasis on laboratory experience and some research participation. Visits to scientific laboratories and other points of scientific interest were arranged to stimulate scientific career goals among the participants. The progress of the participants after training was monitored by Claflin through visits and the exchange of letters. A survey indicated ninety percent of the participants were enrolling in college. Seventy-six percent of the participants enrolled in college opted for careers in science, computer science, engineering and mathematics.

Claflin College is a Historically Black College or University (HBCU) and falls within the meaning and intent of Executive Orders 12320 and 12677 pertaining to Government assistance to HBCUs. The participation of HBCUs in federally supported programs is relatively limited. In order to overcome some of these limitations, the Executive Orders directed federal agencies to increase the participation of HBCUs in federally-funded programs and to strengthen their capabilities to provide quality education. This award represents an effort to strengthen the HBCU community. DOE has determined that this award on a noncompetitive basis is appropriate.

Issued in Aiken, South Carolina on April 27, 1992.

Robert E. Lynch,

DOE Savannah River Field Office, Head of Contracting Activity Designee.

[FR Doc. 92-10987 Filed 5-8-92; 8:45 am]

BILLING CODE 6450-01-M

Savannah River Field Office (SR), Financial Assistance Award; Intent To Award a Noncompetitive Grant

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive award of grant.

SUMMARY: The DOE announces that it plans to award a grant to Selma University, Selma, Alabama, for the conduct of research entitled, "Biodegration of Oils Using Mix Culture Immobilized Beds in a Reactor". The grant will be awarded for a two-year period with DOE support of $265,742. Pursuant to section 10 CFR 600.7(b) and 600.14, eligibility for this award has been limited to Selma University and as a result of acceptance of their unsolicited proposal, DOE has determined that award of a grant is appropriate.

FOR FURTHER INFORMATION CONTACT: Beth O'Rear, Prime Contracts and Financial Assistance Branch, U.S. Department of Energy, Savannah River Field Office, P.O. Box A, Aiken, SC 29802, Telephone: (803) 725-1345.

SUPPLEMENTARY INFORMATION:

Procurement Request Number

09-92SR18271.001.

Project Scope

The proposed research is to determine microbes involved in the biological degradation of mixed hydrocarbons. Data will also be gathered to examine the rates and processes involved in microbial degradation. Mixed hydrocarbon contamination of soils at gasoline stations and roadsides is both a site and nation-wide problem. A better understanding of the natural breakdown processes may lead to a cost savings through an increased reliance on natural degradation rather than remediation when contamination is encountered at low concentrations. The research will provide students the opportunity to participate in meaningful research and provide DOE with the results of the research. The research will also provide additional data in assisting discovery of how microbes aid in the natural degradation of mixed hydrocarbons (fuels) soils.

Selma University is a Historically Black College or University (HBCU) and falls within the meaning and intent of Executive Orders 12320 and 12677 pertaining to Government assistance to HBCUs. The participation of HBCUs in federally supported programs is relatively limited. In order to overcome some of these limitations, the Executive Orders directed federal agencies to increase the participation of HBCUs in federally-funded programs and to strengthen their capabilities to provide quality education. This award represents an effort to strengthen the HBCU community. DOE has determined that this award on a noncompetitive basis is appropriate.

Issued in Aiken, South Carolina on April 29, 1992.

Robert E. Lynch,

DOE Savannah River Field Office, Head of Contracting Activity Designee.

[FR Doc. 92-10988 Filed 5-8-92; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Final Environmental Impact Statement, Initial Northwest Power Act Power Sales Contracts; Administrator's Final Record of Decision

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Record of Decision (ROD) on the Final Environmental Impact Statement (EIS) on Initial Northwest Power Act Power Sales Contracts.

SUMMARY: Based on the analysis in the Final EIS on Initial Northwest Power Act Power Sales Contracts, BPA has decided to continue power sales under the three types of contracts addressed by the EIS without proposing any

amendments. In addition, BPA has decided to pursue the environmental benefits of enhanced enforcement of the Northwest Power Planning Council's (NWPPC) Protected Areas Rule, as documented in Alternative 1.1 in the Final EIS, by developing a BPA policy for enforcement of the rule.

ADDRESSES: Written comments should be submitted to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. JoAnn C. Scott, Public Involvement office, at the address listed above, Record of Decision (ROD).503–230–3478. Oregon callers may use 800–622–4519; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048. Information may also be obtained from:

Mr. George E. Bell, Lower Columbia Area Manager, suite 243, 1500 NE., Irving Street, Portland, Oregon 97232, 503–230–4551

Mr. Robert N. Laffel, Eugene District Manager, room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–465–6952

Mr. Wayne R. Lee, Upper Columbia Area Manager, room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–353–2518

Ms. Carol S. Fleischman, Spokane District Manager, room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–353–2907

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509–662–4377, extension 379

Mr. Terence G. Esvelt, Puget Sound Area Manager, P.O. Box C19030, suite 400, 201 Queen Anne Avenue North, Seattle, Washington 98109–1030, 206–553–4130

Mr. Thomas V. Wagenhoffer, Snake River Area manager, 101 West Poplar, Walla Walla, Washington 99362, 509–522–6225

Mr. Richard Itami, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706

Mr. Thomas H. Blankenship, Boise District Manager, room 450, 304 N. 8th Street, Boise, Idaho 83702, 208–334–9137

SUPPLEMENTARY INFORMATION:

Part 1. Introduction

This document describes Bonneville Power Administration's (BPA) decision not to amend its initial long-term power sales contracts under the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), and to develop a policy to enforce the Northwest Power Planning Council's (NWPPC) Protected Areas Rule, as analyzed in the Final Environmental Impact Statement (EIS) on Initial Northwest Power Act Power Sales Contracts, designated DOE/EIS–0131.

How This Document is Arranged

BPA's decisions are summarized in the next section of Part 1. The decisions presented here are based on the environmental impact analysis in the EIS and relevant economic and policy criteria explained therein, as well as extensive public involvement efforts over the past several years. Some of these decisions require BPA to initiate processes for further public participation and review. Other decisions are linked to related public processes that are ongoing or scheduled for the future. The scopes of these public processes may cover more than one of the separate alternatives analyzed in the EIS.

Part 2 of this document discusses each individual alternative, presenting the comments received and explaining BPA's decisions on each. The discussion for each alternative includes a description of the key environmental issue, a synopsis of the relevant public comments, and an analysis of comments with explanation of the factors used in the decision. Comments are summarized and cited by party name and official file code of the comment. For further information on the comments received and BPA's responses, please refer to the "Summary of Comments on draft EIS on BPA's Initial Northwest Power Act Power Sales Contracts—With Responses" which is included in Volume 4 of the Final EIS.

Part 2 follows the EIS organization of alternatives. The EIS evaluated 18 alternatives within five major policy categories. Alternatives under "Category 1: Hydro Operations and Development" concern the effects of the contracts on hydroelectric dams. "Category 2: Conservation" examines the effects of the contracts on electric power conservation efforts. "Category 3: Resource Planning and Development" examines the effects of the contracts on the way BPA and its customers plan future conservation efforts and power plants. "Category 4: Quality of Service as a Resource Choice" examines how contracts can allow for interruption of electric service as an alternative to building power plant resources. "Category 5: Industrial Load Constraints" examines how the contracts can promote or discourage the growth of industries that depend heavily on electric power.

Summary of Decisions and Related Actions

After having considered the analysis in the EIS and the public comments received throughout the process, BPA's decision is to implement the portion of Alternative 1.1 concerning enforcement of the NWPPC's Protected Areas Rule. This alternative is the environmentally preferable alternative among the alternatives analyzed in the EIS.

BPA has chosen to implement the preferred alternative through a public process to develop a policy on enforcement of the Protected Areas Rule in BPA's resource-related activities. BPA has chosen a policy development process rather than the negotiation of an amendment to the existing contracts or a replacement contract. Because BPA has decided not to change the existing power sales contracts, the decision resembles in part the No-Action Alternative, which consisted entirely of a decision not to amend or replace the existing contracts. The difference between BPA's decision and the No-Action Alternative is BPA's additional commitment, under its decision, to develop a policy for enforcement of the Protected Areas Rule. Public notice explaining the policy development process will be given following the publication of this Record of Decision. Individuals or groups who wish to be placed on a mailing list for the policy development process should write to BPA's Public Involvement Office, P.O. Box 12999, Portland, OR 97208, or call 1–800–622–4519.

The selected alternative will enhance the protection of critical fish and wildlife habitat in the Pacific Northwest. No additional measures were identified in the EIS analysis which would further minimize harm to the environment through the proposed action. Therefore, all practicable means to avoid or minimize environmental harm have been adopted in the selected alternative, to the extent they can be identified in advance of the policy development process.

BPA has committed to proceed with the planned Protected Areas policy development process, while retaining the existing contracts unchanged. The contractual effect of BPA's decision will be the same as the No-Action Alternative, but the environmental benefits of Protected Areas enforcement described in the EIS will be obtained through the policy development process.

BPA does wish to consider improving the current procedures for administering direct service industrial customers' (DSIs) contract provisions governing first quartile service by specifying new "definitive service criteria" for DSIs. Such criteria could be more easily implemented and result in more efficient resource operations than the existing contract provisions and associated

technical operational practices. A BPA proposal to replace some of the existing contract provisions with new definitive service criteria will be made available for public review and comment in the near future. A related proposal, which will be addressed in the same public review process, is the replacement of the industrial replacement energy agreement under which BPA aids DSIs in obtaining replacement energy when BPA restricts deliveries to DSIs.

Other Processes Which Address Issues in This EIS

BPA is preparing to negotiate replacements for the existing power sales contracts and residential exchange agreements, which expire in the year 2001. The development process for the new contracts will be an important forum for BPA, its customers, the NWPPC, and other interested parties. This forum may examine some issues similar to those in this EIS and additional issues concerning BPA's long-term relationship with its customers. Execution of the new contracts will by subject to completion of another EIS, through a process that will provide public involvement opportunities beginning in the early stages of preparation for negotiations.

In another key arena, BPA, the U.S. Army Corps of Engineers (COE), and the U.S. Bureau of Reclamation are currently conducting the System Operation Review (SOR). The SOR is examining the multiple uses of the Columbia River system and their interactions and conflicts, with the goal of balancing the various uses of the system. The resulting balancing decisions will be reflected in a system Operating Strategy. Scoping for that EIS is complete; the next steps are the preparation of an EIS and other public involvement opportunities.

BPA's long-term resource choices will be considered in the Resource Program and in the associated Resource Program EIS, which is also currently under preparation. Acquisition of specific resources will receive individual site-specific review and documentation under the National Environmental Policy Act (NEPA).

Background

In 1981, BPA offered long-term contracts to its wholesale power customers pursuant to the requirements of the Northwest Power Act. BPA prepared and published a Final Environmental Report to accompany the initial contract offer but did not prepare an Environmental Assessment or EIS. The lack of an EIS was challenged by a public interest group, Forelaws on Board, who charged that BPA's failure to prepare an EIS on the offered contracts violated NEPA.

In 1984, the United States Court of Appeals for the Ninth Circuit ordered BPA to prepare an EIS on its 1981 power sales and residential exchange contracts. The Court allowed BPA and its customers to continue operating under the contracts, but also cited provisions of the contracts that allow for later amendment. This EIS takes into account the unusual circumstance that the contracts have been in effect for several years and were left in effect by the Court's order. Therefore, the EIS examines the effects of the existing contracts and potential amendments today, rather than looking back at the circumstances of 1981, when the contracts were offered.

The purpose of the EIS was to evaluate two types of currently effective Northwest Power Act contracts, the Firm Power Sales Contracts and the Residential Purchase and Sale Agreements. The EIS analysis was designed to help BPA determine whether the contracts should be preserved as they are or changed in some fashion. The Court's order noted that the EIS results could be used to guide future contract negotiations, which might require their own analysis under NEPA.

PART 2: Analysis of Comment and Decisions on Alternatives; Category One: Hydro Development and Operations

I. Alternative 1.1—Compliance With Fish and Wildlife Provisions as a Condition of Service

A. Description of Issue

Alternative 1.1 addresses the issue of whether BPA's utility customers would more effectively implement measures in the NWPPC's Fish and Wildlife Program if the power sales contracts required such actions. At present, fish and wildlife obligations are applied to BPA utility customers through licenses for dams, which are under the jurisdiction of the Federal Energy Regulatory Commission (FERC). The alternative assumes that utilities would become obligated to implement the NWPPC's Fish and Wildlife Program measures through an unspecified contract provision (which would be negotiated if this alternative was implemented).

Based on the analysis of impacts in the EIS, Alternative 1.1 is the environmentally preferable alternative among the alternatives analyzed.

B. Summary of Comments

In the draft EIS, BPA specifically requested comment on this alternative in light of the environmental benefits shown for a Protected Areas provision. Several parties supported Alternative 1.1 (NRDC, PSC–02–011; Michael Rossotto (Rossotto), PSC–02–018; NCAC, PSC–02–019; EPA, PSC–02–023; FOE, PSC–02–024; NOAA, PSC–02–028; DOI, PSC–02–030). Rossotto stated that Alternative 1.1 is the best environmental policy and good business policy for BPA, adding that the power sales contracts should not sanction environmentally damaging actions that would threaten ratepayer investments in fish and wildlife protection and enhancement. The United States Department of Interior (DOI) stated that Alternative 1.1 would allow BPA to protect remaining critical fish and wildlife resources and their habitat in the Columbia Basin, guide hydroelectric power developers to use less sensitive areas for development, and coordinate power distribution, and resolve uncertainties in forecasting future power needs in the region. The National Oceanic and Atmospheric Administration (NOAA) and DOI stated that implementing Alternative 1.1 would strengthen the Protected Areas designation concept and provide additional protection for anadromous fish while protecting BPA's fish and wildlife program investments.

Rossotto stated that since BPA applied the Protected Areas Rule to access under its Long-Term Intertie Access Policy (LTIAP) (governing transmission access to BPA's interconnected facilities with the Pacific Southwest), it would be inconsistent not to apply it to other BPA customers. Friends of the Earth (FOE) agreed that a Protected Areas provision in the power sales contracts would enhance the protection for anadromous fish now offered by BPA's LTIAP.

FOE claimed that a Protected Areas provision is both justified and necessary to help ensure that Protected Areas are indeed protected. Natural Resources Defense Council (NRDC) stated that a Protected Areas provision for new projects should be included in the contracts. DOI disagreed with the draft EIS' conclusion that Alternative 1.1 would not significantly affect the implementation of the fish and wildlife program aimed at the fishery impacts at existing dams. The Environmental Protection Agency (EPA) added that contract provisions, such as contract-related fish and wildlife protection measures under the Protected Areas Rule, could provide a clear benefit.

NWPPC and COE gave more qualified support for Alternative 1.1 (NWPPC, PSC–02–025; COE, PSC–02–032). NWPPC

stated that FERC has generally satisfactorily implemented the Council's Fish and Wildlife Program measures applicable to non-Federal utilities, although experience with FERC implementation is limited. NWPPC staff also stated that they are not aware of instances in which BPA's power sales contracts have significantly interfered with the implementation of the Plan or the Program. NWPPC stated support for the analysis in the draft EIS regarding the environmental benefits of a contract provision linked to Protected Areas regionwide. COE stated that as long as the operating constraints and project limits are adhered to, COE would have no objection to any of the contract issues.

The Public Power Council (PPC) and Puget Sound Power & Light Company (Puget), however, did not favor implementation of Alternative 1.1 (PPC, PSC–02–026; Puget, PSC–02–017). Puget stated that such a provision is unnecessary, since the FERC licensing process regulates hydroelectric projects. Puget objected to the exposure of utilities to unknown costs. PPC stated that the EIS should reference the actions BPA's customers already take not only to implement the NWPPC's Fish and Wildlife Program but to protect fish and wildlife through other mechanisms, such as FERC license conditions. PPC disagreed with the draft EIS finding that Alternative 1.1 would provide potential environmental benefit from the inclusion of a Protected Areas provision in the contract. PPC argued that there can be no environmental impact of implementing or not implementing Alternative 1.1, considering FERC practice regarding licensing and other legal constraints on building and operating hydroelectric projects.

Other comments on this alternative expressed concern over the continued decline in Columbia River salmon populations and issues raised by proposed listings of certain stocks as threatened or endangered species under the Endangered Species Act (ESA). Seattle City Light (SCL) (PSC–02–016) stated that fish and wildlife resources should be protected and enhanced by reducing the adverse impacts of storage facilities and power plants developed in the region, SCL also stated that the development of Protected Areas by the NWPPC is a major step in that direction. SCL also expressed the view that the existing measures for fish should be reevaluated, because they fail to meet the needs of some wild salmon stocks in the Snake and Columbia Rivers. SCL's view was that a comprehensive regional framework is needed so that all parties can cooperatively develop amiable solutions. NOAA stated that the selection of the No-Action Alternative would result in continued operation of the hydropower system in the present manner, which has resulted in declining stocks of fish; continued present operations would not allow for a doubling of the fish runs as set out in the NWPPC's Program. COE stated that the draft EIS did not recognize the ESA and the Salmon Summit activities. COE was concerned that the potential operational adjustments for threatened and endangered species may have significant impact with regard to the existing contracts; changes in generation may require amendments or new contracts. In COE's view, the preferred alternative in the draft EIS, the No-Action Alternative, might not be implementable given these recent developments.

C. Analysis of Comment and Decision

The analysis in the EIS showed that, except for the Protected Areas Rule, a power sales contract provision requiring utilities to implement the NWPPC's Fish and Wildlife Program was not likely to have a significant effect on the implementation of the Program. However, it appeared that fish survival could be benefitted by stimulating compliance with the NWPPC's Protected Areas Rule with respect to new hydro development. BPA's intent for this EIS has been to consider contractual and noncontractual means of addressing environmental impacts. Therefore, BPA proposes to develop a policy applying the Protected Areas Rule to a wide range of BPA resource-related activities, such as wheeling and system services to resources. BPA will also address whether its policy should include Protected Areas within the region that are outside the Columbia River Basin. BPA has already promulgated Protected Areas provisions in the LTIAP and has considered them in public proceedings on BPA resource acquisition procedures.

Policy development is favored over contract amendment for three major reasons:

1. A BPA Protected Areas policy will affect a broader group of resource developers and may apply to a wider range of BPA activities than a contract provision. A contract provision applies only to parties to the contract. A Protected Areas condition in power sales contracts might discourage BPA's utility customers from acquiring new hydro resources in Protected Areas, but it would not by itself prevent the sale of such resources to other parties. Similarly, a Protected Areas provision in power sales contracts would not apply to other areas of BPA activity, such as services to enhance the marketability of a resource. A policy has the potential to apply broadly across different groups and different BPA activities.

2. The policy development process is an opportunity to resolve unsettled issues concerning the application of the Protected Areas Rule to BPA's activities through a public process and establish a comprehensive BPA approach to Protected Areas. At present, BPA applies the rule broadly to resource acquisitions and has specific provisions incorporating the rule into the LTIAP and other specific marketing and transmission activities. These provisions are not consistent in applying the rule: some apply the rule throughout the region, but others limit application to the Columbia Basin. The policy process will permit a full discussion of the question of geographic scope, and should provide the basis for a decision on the types of BPA activities to which the rule should apply.

3. The power sales contracts can be amended only by the mutual consent of the parties. BPA's customers may not agree to additional conditions on service without asking for other concessions by BPA. If BPA does not agree to such terms, customers are free to decline to execute an amendment without jeopardizing their right to service under existing contract terms. The utility customers most likely to reject such an amendment would be those most likely to sponsor or acquire Protected Areas resources. Under these conditions, a Protected Areas amendment could fail to enforce the rule where it is needed most.

Concerning the activities in the region to respond to prospective listings of salmon runs under the ESA, BPA is involved in continuing discussions with the National Marine Fisheries Service (NMFS) concerning possible effects of BPA's power marketing activities on candidate species. BPA's position is that candidate species are affected by hydro system operations as a whole, rather than by individual transactions or types of transactions. Thus, measures to protect these species are best addressed in the context of system operations, rather than through piecemeal analysis of specific power marketing activities.

II. Alternative 1.2—No Shift of Firm Energy Load Carrying Capability for DSI First Quartile Service

A. Description of Issue

Alternative 1.2 considers whether operation of Federal Columbia River dams would change if BPA did not draft

certain amounts of water from reservoirs to serve part of the power load of its DSI customers. The part of the DSI load at issue here is the first, or top, quartile, which the power sales contracts do not obligate BPA to serve on a planning basis with firm resources. BPA provides first quartile service during parts of the year, especially summer and fall, by using the flexibility of the Federal hydro system to change the timing of reservoir drawdowns. Drafting at certain times of the year is in effect based on anticipation of future runoff and flows or borrowing from future energy production capability. Borrowing techniques specified in the DSI's power sales contracts include Firm Energy Load Carrying Capability (FELCC) Shift, Flexibility, and Advance Energy. These mechanisms raise environmental concerns because they may result in changed reservoir releases, levels, and flows.

The environmental implications of this alternative are linked to changes in the seasonal shaping of firm energy. If firm energy generation is heavier in one season than another, the resulting hydro operation effects on fish and wildlife would be different. Under the No-Action Alternative, some FELCC is shaped into the months of September through December for service to the DSI first quartile. Under Alternative 1.2, seasonal shaping for this purpose would not take place.

B. Summary of Comments

The comments of two parties describe benefits of implementing Alternative 1.2 (NOAA, PSC–02–028; COE, PSC–02–032). NOAA stated that Alternative 1.2 has the potential to provide for anadromous fish benefits. Alternative 1.2 would shift operation of the hydropower system toward the historical runoff shape and provide additional storage for fish flow releases in the spring and summer, thus increasing anadromous fish survival. COE noted that the EIS states that dam operation would not change significantly, so no significant environmental effects are foreseen. COE stated that this may be true on an annual basis, but at Libby during the late summer recreation period any reduction in reservoir drawdown would benefit reservoir users.

Direct Service Industries, Inc. (DSI, Inc.) and PPC, on the other hand, point out some disbenefits of implementing Alternative 1.2 (DSI, Inc., PSC–02–022; PPC, PSC–02–026). DSI, Inc. noted the adverse effects in cities economically tied to DSIs if reduced DSI operations resulted from Alternative 1.2, as identified in the DSI Options Final EIS. DSI, Inc. also stated that the EIS should specify the consequences, both to the power system and to those cities, of an inability on BPA's part to use the borrowing techniques presently used to serve the DSI top quartile. PPC suggested two possible consequences of BPA being unable to use borrowing techniques to serve the first quartile—changes in transmission planning and a preference by some DSI customers for power supplies from alternative sources. PPC added, however, that it would be speculative to describe the environmental impacts of these changes absent some more detailed analysis of what the alternative sources of power supply might be.

C. Analysis of Comment and Decision

The comment that favored changing the existing contract provisions was based on the expectation that there may be fishery benefits due to changes in hydro operations. As explained in detail in the EIS, hydro operations are not controlled by the power sales contracts, but by separate operating requirements set under the authorities of the operators of power system reservoir facilities. For Federal dams, the operations are the COE and the U.S. Bureau of Reclamation. Power generation takes place within the limits created by such operating requirements. Limiting use of Federal flexibility under power sales contracts would enable other operators to use the same types of flexibility for other transactions. Therefore, BPA will not pursue changes to the contracts, but is participating in decisionmaking processes to set policy and affect the limits on actual operations.

Specifically, BPA, the COE, and the U.S. Bureau of Reclamation are currently engaged in a public process to evaluate the issues involved in balancing the multiple uses of the river system. This process, the SOR, will establish a System Operation Strategy, which will guide future operation of the Columbia River system considering the needs of all river users. Operations for power generation will continue to be subject to the requirements set by project owners. Therefore, issues related to Columbia River hydropower development and operations are more properly addressed in the SOR process.

In addition, current NMFS proceedings in response to proposed listings of Northwest salmon species under the ESA may eventually result in specified hydro operations to protect threatened or endangered species. BPA, COE, and the U.S. Bureau of Reclamation have prepared the 1992 Columbia River Salmon Flow Measures Options Analysis/EIS on alternative river operations to address some of these concerns.

In any event, the analysis of serving the DSI first quartile showed negligible environmental effects. A small change in the seasonal shaping of FELCC could be expected, but the EIS analysis showed that it would be insignificant. The coordinated system would continue to use FELCC Shift to the greatest extent possible to supply other loads and to market as surplus. That is, the same amount of water would probably be drafted from the same reservoirs for other purposes, such as short-term sales of electric power. The changes noted by NOAA and COE are of small relative magnitude and would not likely offer significant benefits to fish survival.

Although BPA's decision is to adopt the No-Action Alternative, other options are not foreclosed; the issue of first quartile service will be open for consideration again. For example, BPA is currently developing a process to renegotiate the power sales contracts offered pursuant to the Northwest Power Act, including those of the DSIs. During the renegotiation process, BPA, the DSIs, and other interested parties will have the opportunity to discuss the quality of first quartile service, among other issues.

III. Alternative 1.3—Limit Firm Load Changes Within Operating Year

A. Description of Issue

Alternative 1.3 examines the issue of whether Northwest power resource operations would change if BPA's customers had lesser contract rights to make short-notice (within the operating year) changes in the amounts of power they wished BPA to supply. That is: What would be the implications for resource operations if DSIs and utilities had to seek supply sources on short notice without help from BPA? During the EIS scoping process, some parties expressed concern that BPA would be unable to meet operating constraints for fish and wildlife if BPA's load changed greatly from the load used in planning hydro operations for an operating year.

B. Summary of Comments

Only one party commented on Alternative 1.3. PPC had two comments on the EIS' conclusions regarding Alternative 1.3 (PSC–02–026). PPC stated that the EIS conclusion that increases in demand do not lead to increases in supply sufficient to limit price increases should be limited to the short-run perspective. PPC also questioned the draft EIS conclusion that limitations on firm load changes within an operating

year would lead to the development of less conservation and more thermal resources if utilities, instead of BPA, developed resources to serve these loads in the long run.

C. Analysis of Comment and Decision

Impact analysis supports BPA's view that the existing contract provisions in the area require no change at this time. Simply shifting responsibilities from BPA to its customers provides no foreseeable environmental benefit or adverse impact. As mentioned previously, the operation of Federal Columbia River facilities to serve firm load changes or any other sort of power use is controlled by operating requirements outside these contracts. These operating requirements are under consideration in the SOR EIS process.

Alternative 1.3 would shift some of the obligation to respond to end-user load changes from BPA to its customers. The change in obligation would tend to increase customer use of non-Federal coordinated system resources to the extent possible. Customers would run their own power plants, if they have any, instead of purchasing power from BPA's system. Since BPA's existing power plants are primarily hydroelectric dams, and other Northwest utilities generate more of their power with thermal plants, the EIS found that Alternative 1.3 could result in different types of environmental effects due to operation of existing power plants. However, the differences are unquantifiable.

Alternative 1.3 also could increase the development of non-Federal resources to back up utility systems or DSIs againt load contingencies. The resources planned for the future could be different from the No-Action Alternative, because BPA's resource plans include more conservation programs and less thermal plant development than the plans of other Northwest utilities. Although PPC disputed the EIS conclusion that the mix of resources developed by utilities would differ from resources developed by BPA, the discussion in the EIS was based on the best available information on utility resource costs and planning. That information indicated that, on the average, utilities would rely more on thermal resources and less on conservation than BPA would. More recent information may indicate increases in the amounts of conservation utilities would develop to meet their own resource needs. In any case, setting aside questions about new resource priorities, the EIS analysis showed that the environmental benefits from this alternative were not significant.

Alternative 1.3 would eliminate customers' rights to increase firm load within the operating year and thus provide increased planning certainly for BPA. However, it is likely that customers with firm load deficits within the operating year would purchase surplus firm energy from BPA when available. Since BPA would market its surplus firm energy in any case, reservoir operations for BPA and the other Northwest utilities would remain the same as under the No-Action Alternative. No effect on fish and wildlife would be expected. If surplus firm power was not available, BPA's customers would have to purchase or exchange energy from other utilities with surplus energy or build their own resources to serve the load. Such acquisitions could be less economic than purchases from BPA, and resource development could deviate from the resource development priorities specified in the Northwest Power Act. Resource operation and development could be less efficient and more costly regionally than under the No-Action Alternative. Consideration of environmental costs of future resource development may not be as thorough. These conclusions arise from recognition of the Federal Base System, which is primarily hydroelectric, as a dampener of BPA's resource costs and thus rates. BPA and the Northwest utilities would continue to operate their hydro resources to produce FELCC and to meet their other operational constraints set in other forums, so again no change in reservoir operation would result.

Category Two: Conservation

I. Alternative 2.1—Conservation Compliance as a Condition of Service

A. Description of Issue

Alternative 2.1 evaluates whether more conservation would be developed in BPA customer service areas if customers were required by the power sales contracts to take action to achieve certain levels of conservation. This is examined in the context of the many factors that affect utility conservation decisions, such as regulatory policies and cost-sharing principles.

B. Summary of Comments

The Northwest Conservation Act Coalition (NCAC) strongly criticized BPA's conclusions that a contract obligation would not change utility conservation achievement. NCAC referred to "lost opportunity" conservation recognized by the NWPPC as having been foregone by utilities, in contrast to BPA's "Rosy Scenario" of utility conservation activities. NCAC also suggested that Alternative 2.1 would be more specific and analyzable if it included a standard for conservation achievement that included independent activity, as well as participation in regional programs, as its measure of compliance NCAC added that the contracts could and should be designed to encourage utility conservation beyond the range of BPA programs. The EPA and NCAC comments stated that the power sales contracts could encourage more conservation efforts (EPA, PSC–02–023; NCAC, PSC–02–019). EPA noted that the EIS indicates that some improvements to conservation efforts and fish and wildlife enhancement could occur as a result of amendments to the power sales contracts. EPA asserted that provisions that do not appear to result in a "significant" change are discounted in the EIS.

The comments of SCL and PPC, on the other hand, support the No-Action Alternative (SCL, PSC–02–016; PPC, PSC–02—26). SCL stated that the language of the current power sales contracts provides an adequate basic mechanism for carrying out the conservation mandates of the Northwest Power Act. PPC pointed out that publicly owned utilities participate, as do IOUs, in least-cost planning and in BPA's conservation programs and suggested that the EIS should reflect this reality.

C. Analysis of Comment and Decision

The EIS projected no significant environmental effects from Alternative 2.1, because there would be no significant change in the key factors that influence utility conservation decisions, specifically, cost and regulatory concerns. The NCAC critique relies on the assumption that a contract obligation would change utility conservation achievement, but does not indicate why it should be expected that cost and institutional issues would be settled with any greater success or speed than they are currently. The overview of conservation issues in Chapter 2 of the EIS and the description in Chapter 4 of utility conservation activities identify key issues not governed by power sales contracts that have primary influence over utility conservation decisions. Such issues include availability of BPA funding, cost-effective price determinations, regulatory treatment of conservation costs and return on conservation investment, and regulatory requirement of least-cost planning. Creating a customer obligation by contractual

agreement between the parties would not solve the public policy questions that BPA, the NWPPC, utilities, and regulatory bodies have been struggling with since the passage of the Northwest Power Act.

EPA commented that the EIS focuses only on conservation increases of considerable size and neglects small but positive gains. This is true, and it is appropriate with respect to justifying a contract amendment process. It is not true with respect to BPA's conservation investments and voluntary programs. In order to present a net benefit, negotiation of amendments to the existing power sales contracts would have to promise significant increases in conservation compared to those obtainable by increasing BPA voluntary programs. Existing BPA conservation programs incorporate cost-effective measures that individually achieve small amounts of energy savings, and allow for addition of measures as new opportunities for energy savings are identified.

The EIS analysis of existing power sales contracts indicates that the contracts provide incentives for customer implementation of conservation. These incentives expose the customer to certain costs or risks, such as surcharges or reduced allocations of firm power during shortages in the event of failure to achieve conservation savings.

For these reasons, BPA has decided not to pursue contract amendments in this area.

II. Alternative 2.2—Conservation Transfers Facilitated

A. Description of Issue

Alternative 2.2 examines whether there would be more conservation achieved in the Pacific Northwest if BPA customers could enter into conservation transfers with each other. The conservation transfer would be accomplished by one utility funding conservation programs in another's service area. The conserving utility would exchange to the investing utility some of the power the conserving utility receives from BPA. The current contracts, in General Contract Provision (GCP) 56, reflect BPA's interpretation of the statute on the resale of Federal requirements power for the benefit of consumers and utilities normally dependent on the purchaser for their firm power supplies. GCP 56 is consistent with the provisions of the Bonneville Project Act which support the operation of Federal facilities and sale of Federal power for the benefit of the general public, and particularly a utility's own domestic and rural consumers. It also helps to implement the statutory directive in section 5(b)(6) of the Northwest Power Act.

B. Summary of Comments

SCL and PPC appeared to believe that the current contracts adequately promote conservation (SCL, PSC–02–016; PPC, PSC–02–026). SCL stated that mechanisms already exist to permit the region to benefit from conservation efforts in any utility's service area. SCL stated that no further contract authority is required to make the concept of conservation transfers work. PPC noted that the EIS assumes that conservation transfers would occur only from consumer-owned utilities to IOUs, but stated that other configurations are possible. PPC also claimed that certain assumptions in the EIS regarding conservation transfers are not realistic, resulting in benefits being lower than the EIS showed.

NCAC, on the other hand, questioned the EIS assumptions and analysis that led to BPA's preference for the No-Action Alternative (PSC–02–019). NCAC asked why the contracts treat a kilowatthour conserved through an independent conservation program offered by a full requirements customer, not as the customer's owned resource, but as a "theft of BPA property." NCAC stated that it is not clear that this view of a conservation transfer is consistent with the Northwest Power Act's treatment of conservation. NCAC also claimed that the EIS found scenarios in which a change in contractual interpretation would increase the amount of conservation captured, but the EIS still prefers the No-Action Alternative. NCAC added that the final EIS must recognize that there are alternatives to BPA's "political/legal" view of the situation and must explore the implications and effects of accepting those alternatives.

C. Analysis of Comment and Decision

BPA has tested the mechanics and feasibility of conservation transfer arrangements through surplus firm sales. In 1989, BPA entered into a pilot conservation transfer agreement with Snohomish County Public Utility District (PUD), Lewis County PUD, and Mason County PUD No. 3 for the transfer to Puget of conservation energy made available under sales of surplus firm power not subject to the contractual prohibition against resale.

The EIS analysis pointed out that any increase in conservation transfers due to a change in policy on resale of BPA power was sensitive to fluctuating market conditions and could create problems in view of BPA's mandates to protect its resources for the benefit of preference customers. BPA analysis and the comment received revealed no basis to expect that a change to allow resale of BPA power would result in significant conservation benefits. Therefore, because conservation transfers using firm requirements power would be inconsistent with the statutory purposes noted above which are in part implemented by GCP 56, and because the EIS analysis did not show commensurate significant benefits even if transfers were permissible under the statutes, BPA has decided to make no change in the contract provisions to facilitate conservation transfers.

BPA's interpretation of its statutory authority must balance statutory purposes. Here GCP 56 is based upon two purposes: ensuring Federal requirements power is used by the utility to serve its consumers; and preserving Federal Base System power for service to preference customer loads. Those purposes may not be met by permitting transfers of firm requirements power from a preference utility to an IOU as presented in this alternative. As explained in the EIS, the power sales contracts can accommodate conservation transfers only through provisions that are consistent with BPA's interpretation of the power sales contracts and statutes regarding the use of Federal Base System power and sales of requirements power. The question presented for this EIS is therefore narrow: Would there be benefits due to a contract change? The NCAC arguments are directed towards BPA's interpretation of relevant Federal law regarding resale of requirements power rather than toward the role of these contracts. Because the contract does not support resale of power sold for firm requirements service based on sound statutory purposes, and because the EIS analysis did not demonstrate significant benefits from facilitating conservation transfers, BPA has decided not to propose contract amendments to permit conservation transfers.

Category Three: Resource Planning and Development

I. Alternative 3.1—BPA Load Placement Certainty

A. Description of Issue

Alternative 3.1 analyzes whether BPA's planning of future conservation and generating resources would be different if BPA had 10-year notice of customer needs rather than the current 7-year notice. A 10-year notice would increase the certainty of BPA's future

loads for purposes of planning resources.

B. Summary of Comments

Only one party, PPC, commented on Alternative 3.1 (PSC–02–026). PPC stated that it is not clear that only coal plants have lead times longer than 7years; if other resources have similarly long lead times, then the distinction between 7 and 10 years may be moot. PPC urged that the EIS point out that requiring longer notice periods would reduce the flexibility of BPA's customers to respond to resource opportunities. BPA's customers probably would not agree to such an amendment without some other concession by BPA. PPC added that it should be made clear that the restrictions are relevant only to those BPA customers that have considerable resources of their own.

C. Analysis of Comment and Decision

BPA proposes no change at this time in the power sales contract provisions regarding customer notice of intent to place load on BPA. The EIS analysis showed that the effect of 10-year notice versus 7-year notice is unpredictable, but no significant environmental changes are projected. The issue is the sharing of risk between BPA and its customers with respect to future load/resource uncertainty. Regional resource planning forums, such as BPA Resource Programs, NWPPC processes, and State utility regulatory proceedings, have explicitly recognized the risks of uncertainty and some of the strategies available to deal with them. BPA and utility resource plans have become more flexible and therefore necessarily less prescriptive in order to make use of cost-effective resource options. BPA has adopted a policy for its Resource Programs that it will only plan to develop resources for contracted-for load. For the time being, this puts a reasonable upper limit on the risk BPA will assume for future resource development. Solutions to the problem of load/resource uncertainty will not be found by expedients such as tightening customer notice requirements.

II. Alternative 3.2—BPA as Regional Supplier

A. Description of Issue

Alternative 3.2 considers whether there would be significant differences in conservation and power resource development if Northwest resource development were controlled centrally under BPA. The current power sales contracts provide that utility customers may develop their own resources.

B. Summary of Comments

The only comments on Alternative 3.2 came from PPC (PSC–02–026). PPC claimed that there would be no difference in resources developed by BPA as resource supplier for the region versus those developed by individual utilities. PPC referenced a Pacific Northwest Utilities Conference Committee study that extends projections through the year 2001. PPC suggested that the EIS should note that least-cost resources may be acquired by utilities, constrained by local and State regulation; and that there is no evidence that centralized acquisition will lead to lower costs than otherwise, given the institutions and technologies that will prevail in the future. PPC also stated that the assumed economies of scale associated with the Federal system must be compared with all the costs of centralized acquisition.

C. Analysis of Comment and Decision

In view of the discussion for the previous alternative and the provisions of the Northwest Power Act preserving independent resource decisionmaking by utilities (section 10(a)), it is clear that there is no real benefit to be expected from a contract amendment. Improved coordination of regional resource planning under the principles of the Northwest Power Act could have significant environmental benefits under some of the scenarios studied in the EIS, but the regulations and policies applying to the siting of generating resources in the Northwest should be the focus. BPA's customers' rights to plan and acquire resources independently are protected by the Northwest Power Act. The effect of such independent development (compared to regionally centralized resource development by BPA under Northwest Power Act priorities) was studied by BPA and the NWPPC prior to this EIS. Centralized resource development by BPA was found to result in lower net regional costs due to increased conservation and use of Federal resources such as Washington Public Power Supply System (Nuclear) Project (WNP)-1 and -3 and firming of Federal nonfirm energy. Current information on independent utility resource development shows more use of renewable resources (such as small dams and cogeneration plants) and more coal plants than if resource development was centralized, although utilities likely would not develop coal plants until after they pursue conservation and other low-cost resources.

Various factors have increased the similarity between the resources that may be acquired by BPA and those that would be developed by utilities. Least-cost planning processes are increasingly used by State regulatory bodies and utilities. This allows for review and comment leading to greater emphasis on conservation and renewable resource investment, transmission linkages, and purchase agreements in the planning stages. Competitive bidding for future resources may also reduce reliance on large thermal projects. In addition, some of the benefits of regional cooperation can be realized by means other than having BPA act as the sole regional supplier of new resources. Joint venture projects and developments, with or without BPA participation, are an example.

III. Alternative, 3.3—Customer Planning on Other Than Critical Water Basis

A. Description of Issue

Alternative 3.3 discusses the effects on operation of Northwest dams and development of Northwest power resources if the current contracts did not incorporate the criterion of "critical water" planning. BPA and other Northwest utilities that operate power-generating dams use a conservative critical water planning standard to predict how much power can be generated on a firm basis with the annual water runoff. This standard tends to result in a smaller rating for the system's generating capability than a less conservative standard and therefore may tend to encourage the development of more generating resources to supplement the conservatively rated hydro capability.

B. Summary of Comments

Only COE commented on Alternative 3.3 (PSC–02–032) in the draft EIS. COE stated that any added drafting of the reservoirs to support average water planning would not be an acceptable alternative to those who already object to drafts required to support critical water planning.

C. Analysis of Comment and Decision

The EIS qualitatively evaluated the effect of the power sales contracts on customer planning criteria. The EIS found that there would be no environmentally significant change.

Critical water planning criteria are established and applied under the Pacific Northwest Coordination Agreement (Coordination Agreement), to which BPA and its generating customer's are parties. All parties to the Coordination Agreement continue to be bound by its critical water planning provisions. Although the BPA power

sales contracts incorporate and refer to critical water planning criteria, and require that the capability of all hydro resources used to serve firm loads be based on critical water planning, they do not require customers to meet all firm load with planned firm resources under Coordination Agreement criteria. On the other hand, the current contracts include a disincentive against noncritical water planning, in the form of a charge that applies to preference customers that own and operate significant power resources (Actual Computed Requirements purchasers).

At present, the majority of BPA's customers with hydro resources use critical water planning regardless of whether BPA's power sales contracts require or permit planning on other bases. This supports the EIS conclusion that Alternative 3.3 would result in no significant changes in utility resource planning and new resource needs.

BPA has decided not to amend its power sales contracts to adopt this alternative. If utilities were to change their resource planning criteria, BPA might need to change its standards for service to firm loads to avoid undue costs to provide backup power to utilities that elected not to make resource investments. And, as pointed out by COE, due to the needs of other river users, BPA might not be able to rely on deeper reservoir drafts at Federal resources, the Columbia River hydro projects, under a less conservative planning standard.

Because of the key role of the Coordination Agreement in regional power planning and operations, the critical water planning issue is best argued in forums other than this EIS. The Coordination Agreement will expire in 2003; the parties are in the process of considering whether any changes are necessary in a renewed agreement. Interested parties also are participating in the SOR to consider the environmental and economic balances among the users of the Columbia River, including hydro planning standards.

IV. Alternative 3.4—Improved Ability to Exercise Provisions to Make Purchases in Lieu of Exchanges

A. Description of Issue

Alternative 3.4 evaluates the potential changes if BPA were able to make purchases in lieu of exchanges more quickly than is allowed under the 7-year notice required by the current Residential Exchange Agreements. The Residential Exchange Agreements called for by the Northwest Power Act allow BPA to buy other resources instead of the customer's exchange power under certain conditions. Because these "in lieu" purchases can have economic effects on the exchanging customer, there are contract notice provisions and some other limitations that apply to BPA's use of this option.

B. Summary of Comments

There were not substantive comments on Alternative 3.4.

C. Analysis and Decision

BPA will not pursue changes in this area. While someday there may be economic benefits from reworking these contract provisions, any environmental effects would be insignificant, because there will not be real changes in the types or timing of generating resources developed to serve regional firm loads. The major change could be to advance or delay by a few years BPA's need to develop resources. The environmental effects of this shifting of risk likely are not significant. The potential financial effect on the costs of the residential exchange program and the costs of the exchanging utility would not be predictable.

V. Alternative 3.5—Shorter Contract Terms

A. Description of Issue

Alternative 3.5 analyzes whether there would be any significant environmental effects if the Northwest Power Act power sales contracts were limited to 10-year terms instead of the current 20-year terms. Shorter contract terms would increase the flexibility of BPA and the parties to make major changes in the contracts earlier than the end of the existing 20-year contracts.

B. Summary of Comments

The comments received on Alternative 3.5 generally did not favor implementation of this alternative (Puget, PSC–02–017; DSI, Inc., PSC–02–022; PPC, PSC–02–026). Puget stated that a shorter contract duration would increase the uncertainty of the terms upon which power would be available from BPA in the long run and further discourage utilities such as Puget from relying upon BPA for long-term power purchases. DSI, Inc. stated that the EIS conclusion that resources developed for self-generation could increase competition for regional fuel supplies, driving up prices, would be true only if the use of self-generation resulted in less efficiency and more fuel use. DSI, Inc. stated that the EIS should recognize that DSI cogeneration might be more fuel efficient than alternative resources, resulting in less fuel use and less competition for regional fuels. DSI, Inc. added that the EIS should point out that shorter contract terms could cause DSIs to look for other suppliers, and BPA could lose the DSI reserves. The implication is that construction of additional resources or purchase of additional power could become necessary. PPC stated that it is not clear why transmission costs would be higher, as stated in the EIS, if a DSI were served by an entity other than BPA. PPC added that the claims that self-generation may lead to redundancy and that the supply response has no downward impact on market prices are unsupported.

C. Analysis of Comment and Decision

The Bonneville Project Act limits BPA contracts for the sale of electric energy to terms not longer than 20 years, and the legislative history of the Northwest Power Act indicates that Congress contemplated that 20-year contracts would be offered. The 20-year term permits a reasonable planning period for BPA and its customers, and reduces uncertainty over the parties' respective obligations. BPA will not pursue changes in these contract provisions at this time. BPA would have much greater difficulty performing its mandated role as a requirements supplier to Northwest utilities in the absence of reasonably long-term commitments.

The concept behind this alternative was the desire to be able to modify customer power sales contracts to better conform to Northwest Power Act principles after several years' experience under the contracts and the Northwest Power Act. The environmental implications of the alternative would arise primarily from changes in the obligations of various parties to develop resources. Resource development obligations would change if customers responded to the shorter contract term by shifting their reliance from BPA to other options they perceived as more certain long-term sources of supply. The EIS analysis explained that increasing uncertainty in the underlying contractual relationship of customers with BPA would not significantly change their resource planning strategies. Customers base their analyses of resource needs on their statutory rights to BPA power and their projections of BPA future rates compared to resource costs.

Category Four: Quality of Service as a Resource Choice

I. Alternative 4.1—Increase First Quartile-Type Interruptibility

A. Description of Issue

Alternative 4.1 evaluates the effects of increasing BPA's contract rights to restrict BPA service to the second, third and fourth quartiles of DSI load. Alternative 4.1 also considers the effects if BPA had a similar contract right to cut power deliveries to customer load that was not DSI load.

B. Summary of Comments

NWPPC disagreed with the implication that increased DSI interruptibility would, of itself, have hydro operational impacts. The comment stated that most of the adverse impacts described in the EIS are not the inevitable result of increased DSI interruptibility but are the result of modeling assumptions about hydro system operations. Jim Lazar (Lazar) PSC–02–031) stated that the conclusion under Alternative 4.1 represents an economic judgment, not an environmental evaluation. Lazar argued that the EIS should look at impacts of increased DSI interruptibility on air quality, water quality, fish and wildlife issues, and land use, and not simply reject the concept because of what Lazar characterized as an unquantified and irrelevant economic impact. Lazar also characterized DSI service as a subsidy, based on the difference between DSI rates and the costs of new resources.

C. Analysis of Comment and Decision

NWPPC is correct in pointing out that impacts of increased interruptibility are importantly influenced by modeling assumptions. Environmental analysis of hydro system operations, which may affect those assumptions, is now underway. As mentioned elsewhere in this Record of Decisions, the SOR process addresses the decisions made by reservoir managers to control operation of the hydro system for its multiple uses. The environmental effects of changed hydropower operations that were reported in the draft EIS would indeed be different if hydro operating requirements were changed. Because hydro operations, rather than contract terms, control impacts, BPA will not attempt to remedy operational impacts through amendments to its power sales contracts. Lazar's concern over the environmental effects of hydro operations to serve DSIs is best addressed in the SOR process.

The Lazar comment addressed broader concerns that increased interruptibility under this alternative, including concern over the new resource cost impacts of service to DSIs, taken as separate from other customer groups. BPA's resource planning is a broad scope activity that takes into account BPA's whole expected load, the uncertainties in various customer load sectors, and options for maintaining flexibility and managing risk. This process gains efficiency by combining the needs of all types of customers, not by segmenting them. BPA resource costs are allocated among customer groups according to Northwest Power Act rate provisions. There is no basis to assume that service to DSIs should be valued entirely at marginal cost, any more than any other customer group. None of BPA's current requirements sales, to either DSIs or utilities, are charged at marginal cost in the sense of the Lazar comment, and therefore the load growth of any customer class would appear to be subsidized. BPA's rates are set so that its total costs, including costs of resource additions, are recovered over all of its rates.

The remainder of the Lazar comment is aimed at the net economic effect on the Pacific Northwest of continued BPA service to DSI customers, especially under existing terms and rates. The economic and political questions surrounding service to DSIs were the subject of a special decisionmaking process in 1985, the DSI Options Study. This process resulted in regional consensus that there was a net benefit to all parties from certain BPA actions aimed at supporting the competitiveness of Pacific Northwest DSIs for the near term. Lazar's economic concerns will likely become a subject of discussion in the upcoming process of developing replacements for the existing power sales contracts.

With respect to interruptibility of non-DSI load, the EIS did not quantitatively analyze impacts of Alternative 4.1 on such loads, since there is little information on this potentially diverse area. BPA has made limited interruptible energy sales to certain retail industrial customers, for example, to displace fossil fuel use when market prices allowed. This marketing has been done outside the power sales contracts under separate sales arrangements. BPA is willing to pursue these opportunities in the future. With Puget Sound area utilities and industries, BPA also explored the potential for retail interruptible loads in connection with the development of the Puget Sound Area Electric Reliability Plan (PSAERP). As proposed in the PSAERP draft EIS, curtailment will be used as a contingency measure, to provide flexibility to respond to unexpected changes in load growth or resource development. Further discussion and investigation is necessary before Northwest utilities can consider widespread use of retail interruptible loads.

II. Alternative 4.2—No BPA Purchase Required for Certain Exercise of First Quartile Restriction Rights

A. Description of Issue

Alternative 4.2 evaluates whether the operation of dams and other power plants would change if BPA could interrupt DSI service without having to buy replacement power. Alternative 4.2 removes the requirement that BPA purchase available replacement power at up to "reasonable cost" before restricting the first quartile to the extent it was served with shifted FELCC.

B. Summary of Comments

The only comment on Alternative 4.2 addressed the analysis (PPC, PSC–02–026). PPC stated that the impacts of Alternative 4.2 should be estimated by modeling the operation of the DSI plants with various assumptions regarding the cost of replacement power.

C. Analysis of Comment and Decision

As was noted in the summary of decisions in this Record of Decisions, BPA is discussing with the DSIs the development of improved procedures for administering the DSI contract provisions governing first quartile interruptibility. The concept under discussion is to specify "definitive service criteria" for first quartile service that could be more efficiently implemented that the existing contract provisions and associated technical practices. A BPA proposal to replace some of the existing contract provisions with definitive service criteria is being prepared for future public review and comment.

The EIS showed that the impacts of Alternative 4.2 on DSI operations and on hydrosystem operations are not reasonably quantifiable. Several factors are too speculative to predict. One is the likelihood that BPA would need to purchase energy under the base case to comply with the contract terms; another is the likelihood of having to restrict DSI load when BPA has a purchase obligation for energy at reasonable cost. Still another is the costs and sources of reasonable-cost energy. Another is the degree of success BPA would have with requests for curtailment of nonessential

electrical loads. The EIS analysis includes the effect of Alternative 4.2 on DSI decisions to request FELCC shift; the availability of replacement energy at costs low enough for the DSIs to purchase it and avoid curtailments; and BPA's practices for power planning and operations.

The EIS showed that implementing Alternative 4.2 would shift the obligation for some power purchase costs from BPA to the DSIs. The increased costs might result in uneconomic costs of production for the DSIs, possibly leading to decreased production and power consumption, but it was not possible to quantify how frequently these situations would occur. It is impossible to determine what benefits would accrue from attempting to achieve the accuracy the PPC suggests would arise from estimating the costs of replacement energy. The analysis in the EIS is as complete as reasonably possible. Making further assumptions would introduce unreasonable speculation to the analysis and would give a misleading impression of the extent to which effects are known.

Alternative 4.2 was found to have no effect on system operations, because the same amount of load was generally served by the same resources in both cases.

III. Alternative 4.3—Increase Quality of Service to First Quartile

A. Description of Issue

Alternative 4.3 analyzes the effects of increasing the quality of service to DSIs so that BPA would be obligated to acquire resources for the entire DSI load instead of three-quarters as under current contracts. In addition, this load would not provide reserves to BPA through contractual restriction rights. Alternative 4.3 probably would require statutory changes but is included to provide contrast to other alternatives, which examine decreases in DSI quality of service.

B. Summary of Comments

PPC stated that the EIS should explain why changes in statutes would be required to firm up the entire DSI load (PSC–02–026).

C. Analysis of Comment and Decision

As was noted above under Alternative 4.2 and in the summary of decisions in this Record of Decision, BPA is discussing with the DSIs the development of "definitive service criteria" for first quartile service. A BPA proposal to replace some of the existing contract provisions with definitive service criteria is being prepared for future public review and comment.

Section 5(d)(1)(A) of the Northwest Power Act authorizes BPA's Administrator to sell power to existing DSIs. The same section also requires that sales to DSIs provide reserves for firm power loads in the Pacific Northwest. Firm service to the entire DSI load, as was analyzed under this alternative, would eliminate the ability of DSI loads to provide energy reserves, and might therefore conflict with this provision.

The EIS assessed impacts on fish and wildlife, operations, need for resources, and planning and operational reserves. The EIS showed that conversion of nonfirm DSI load to firm quality of service would cause the costs of BPA resource acquisitions to occur earlier. Under expected loads, the increased firm load obligation from this alternative would result in increased acquisition of conservation and renewable resources. Addition dates for large thermal plants were advanced by small increments, and additional short-term power purchases were required. (Loss of second quartile planning reserves is addressed in Alternative 4.4.) The effect on resource operations would arise primarily from the loss of the benefits of combination service to the first quartile, that is, the dependable market for secondary energy. No change is expected in the amount of FELCC shifted, since FELCC tends to be used by the coordinated system to its maximum extent in any case. No adverse environmental effects are expected due to the changes in resource operations.

Considering the results summarized above, BPA continues to prefer not to amend the power sales contracts to adopt this alternative. BPA and the DSIs benefit from the current contract provisions that, on a planning basis, provide less than full firm service to the DSI load. This issue may be revisited in the upcoming contract renegotiation process, or in public review of new definitive service criteria for DSIs.

IV. Alternative 4.4—No DSI-Type Reserves

A. Description of Issue

Alternative 4.4 discusses the effects of eliminating the current contract provisions that allow service to the DSIs to be interrupted. Eliminating these provisions would represent a loss to BPA of the planning and operating reserves currently provided under DSI contracts. This alternative, like Alternative 4.3, provides a contrast to other alternatives, which look at decreased DSI quality of service. Unlike Alternative 4.3, however, the first quartile remains interruptible in Alternative 4.4. The EIS assumed firm service for three quartiles of DSI load for resource planning and operational purposes. The first quartile would be served with nonfirm energy, surplus firm energy, or shifted FELCC. BPA would have no right to interrupt the first quartile in event of a forced outage or for system stability.

B. Summary of Comments

There were no substantive comments on Alternative 4.4.

C. Analysis and Decision

The EIS identified the options available to BPA to replace DSI forced outage and stability reserves and second quartile planning reserves with other reserves.

Restriction of the DSI second quartile in the event of a Federal resource delay or poor performance is governed by terms of the DSI power sales contract. Second quartile restrictions are not made automatically whenever a Federal resource is delayed or does not perform up to expectations. Second quartile restrictions are permitted by the DSI power sales contracts only when resource delays or poor performance result in or make worse a firm energy deficit and when all other means to serve the second quartile by acquiring or recalling energy at "Reasonable Cost" are exhausted. Thus, in modeling the effect of the second quartile restriction right, before restricting the second quartile, BPA's analytical model would serve the second quartile with nonfirm energy and purchases from other utilities when possible. Under Alternative 4.4, second quartile restriction rights are no longer available in the event of plant delay. Any occurrence of plant delay is identical in Alternative 4.4 and the No-Action Alternative.

BPS's contractual right to interrupt DSI service provides BPA with system reserves. Implementation of Alternative 4.4 would require BPA to replace the reserves provided by the DSI contracts with other resources or with interruptibility arrangements with other customers. Replacement of DSI forced outage reserves could require investment in combustion turbines or negotiation of contracts with other customers to provide such reserves. Utilities or other suppliers could provide reserves from generating resources under long-term contracts. Little information is available on the feasibility of using non-DSI loads to provide forced outage reserves.

Obtaining such reserves from numerous smaller non-DSI loads likely would be less operationally efficient and thus less valuable than current DSI reserves. Stability reserves could be replaced by investing in load tripping equipment, by reducing reliability of service, or by reducing the import capability of the Northwest-Southwest Intertie. Second quartile planning reserves could be replaced through a resource strategy to build ahead of need, or with short-term purchases in the event of resource delay or poor performance or by a resource strategy to build ahead of need. Neither of these strategies would result in significant changes in resource operations or impacts.

BPA will not amend the existing contracts to adopt this alternative, because there is no clear advantage to abandoning the use of the planning and operating reserves provided by the DSIs. To replace the reserves currently provided by the DSIs could be more expensive, could reduce the stability of BPA's resource planning and load forecasting processes, and could reduce the reliability of BPA's reserves. This issue may be revisited in the upcoming power sales contract renegotiation process.

Category Five: Industrial Loan Constraints Alternatives

I. Overview

This section of the Record of Decision will group Alternatives 5.1 and 5.2 together and 5.3 and 5.4 together because of the similarity of the issue areas. Alternative 5.1 addresses an assumed larger DSI firm load, and 5.2 addresses a smaller DSI load. Alternative 5.3 addresses an assumed removal of New Large Single Load (NLSL) constraints, and 5.4 addresses an increase in those constraints. The alternatives in Category 5 are intended to bracket some extremes of DSI and retail industrial firm load size.

II. Alternative 5.1—Larger DSI Firm Load and Alternative 5.2—Smaller DSI Firm Load

A. Description of Issue

Alternatives 5.1 and 5.2 evaluate whether BPA's plans for development of conservation and power plants would change if DSI load could grow larger than or was more strictly limited than allowed under current contracts. Alternative 5.1 assumes assignment or transfer of current unused DSI Contract Demand. The amount of activity in transfers of unused DSI Contract Demand is to some extent a function of the types of assignments that would be approved by BPA. Alternative 5.2 assumes that BPA would not be obligated to plan to serve DSI load after contract expiration dates. No new transfers or assignments of current unused Contract Demand would occur, so a DSI plant closure or termination of a DSI contract would permanently reduce BPA's DSI obligations. The alternative also assumes that the contracts prohibit technological increases (increases in demand for the purpose of plant technical improvements or modifications) and BPA service to DSI wheel-turning load (plant load not integral to the industrial process).

B. Summary of Comments

Regarding Alternative 5.1, PPC stated that the legality of assignability of DSI contracts has not been established (PSC–02–026).

Regarding Alternative 5.2, DSI, Inc. stated that the assumption for the EIS analysis that BPA is not obligated to plan to serve DSI load after contract expiration is contrary to the position that BPA took at the time it offered its initial Northwest Power Act contracts (PSC–02–022).

C. Analysis of Comment and Decision

The EIS analyzed Alternatives 5.1 and 5.2 by determining extreme high and low levels of DSI contract demands, given current levels and certain assumptions regarding Technological Improvement Allowances and assignment of contract demand. The resulting levels of contract demand represent, in effect, the possible upper and lower limits of BPA's obligations under the present DSI power sales contracts (within certain constraints). These extremes are not reasonably achievable without radical changes in the contracts and therefore are simply anlytical endpoints to bracket the results of more reasonable, moderate potential changes.

Regarding PPC's comment, the EIS makes clear throughout that the alternatives analyzed are hypothetical, assumed solely for the purpose of determining to the extent possible the potential impacts of such alternatives. BPA recognizes that some customers believe that issues about contract assignability have not been resolved; neither BPA nor the EIS makes assumptions about the legal circumstances under which assignments may be made, or the reasonableness of assignability in general.

Similarly, regarding the DSI, Inc. comment, the EIS analysis is intended to address a hypothetical decrease in DSI loads for the purpose of analyzing the environmental impacts. The assumptions made for the analysis should not be interpreted as implying that BPA assumes that such changes in service would be made. BPA recognizes its current contract commitments and the issues involved in changing the status quo. Current DSI contracts provide for notice to BPA from each DSI of whether it will request a follow-on contract from BPA for service beyond the expiration dates of the current contracts. The Northwest Power Act does not, however, require BPA to offer additional future DSI contracts.

Additional DSI load growth as assumed by Alternative 5.1 might cause BPA to develop resources to meet load growth. If some of the contract limitations were loosened, the EIS analysis showed that DSI load in 2001 could grow by about 700 megawatts, or 19 percent above current projections. The additional resource development would incur the environmental impacts associated with the new resources in BPA's resource stack, as described in the EIS. For Alternative 5.2, DSI firm contract demand for which BPA must acquire resources could be decreased by about 7 percent by 2001. This would not significantly change the amounts or types of resources developed by BPA.

BPA will not amend the existing contracts to adopt either of these alternatives. The DSI power sales contracts do not explicitly address principles for assignment of Contract Demand. Instead, General Contract Provision 39 deals with assignment of contract. It gives advance consent to security-type assignments and provides for other assignments by mutual consent between the contract holder and BPA. BPA's practice has been to consider each proposed assignment on its individual merits.

III. Alternative 5.3—Remove NLSL Constraints and Alternative 5.4—Increase NLSL Constraiants

A. Description of Issue

Alternative 5.3 evaluates whether electric power use by new large industrial facilities other than DSIs (NLSLs of BPA's utility customers) would increase if BPA were not required to charge a higher rate for such loads. Alternative 5.4 evaluates whether such loads would decline if the higher rate applied to any industrial load growth, not just load increases at single facilities of 10 average megawatts or more in a year. These alternatives set extreme end points for encouraging or constraining large industrial development in the region by means of reducing or increasing wholesale rate incentives.

B. Summary of Comments

PPC provided several clarifying comments regarding the EIS analysis of Alternative 5.3 (PSC–02–026). No substantive comments were received on either Alternative 5.3 or Alternative 5.4.

C. Analysis of Comment and Decision

The analysis for Alternatives 5.3 and 5.4 studies extreme high and low scenarios that are not likely to occur but which serve as endpoints to bracket the effects of more reasonable, moderate potential changes. The analysis concerns the portion of the region's non-DSI industrial sector that is served by preference customer utilities. It primarily seeks to assess the effect on load growth in that load sector due to changes in applicable BPA rates to the serving utilities. Industrial customers of IOUs would not be affected, because BPA would charge the New Resources (NR) rate under section 7(f) of the Northwest Power Act for firm requirements of new large industrial loads of IOUs just as it would for other firm loads of IOUs.

The EIS analysis compares Alternative 5.3, which is a high case, to the No-Action Alternative under existing contracts. The Alternative 5.3 case assumes Congressional modification of the NLSL provisions of the Northwest Power Act and consequent changes in the utility power sales contract. The alternative case assumes that the average rate charged all NLSLs in preference customer service areas is the sum of the Priority Firm rate and a retail markup. This necessarily involves some inaccuracy in assumed retail rates, since utilities have flexibility to establish special rates for industrial consumers. For the No-Action Alternative, it is assumed that the rate charged all NLSLs in preference customer service areas under the existing contracts is the sum of the NR rate and the same retail markup as in the high case.

The analysis for Alternative 5.4 uses the Joint BPA–NWPPC Medium Case forecast for public utility industrial loads as a benchmark to assess the potential impacts of this alternative. The Joint Forecast assumes no NLSL constraints (i.e., Colngressional repeal of section 3(13) of the Northwest Power Act) and therefore is based exclusively on the Priority Firm rate. The analysis consists of two scenarios. In the first (the targeted approach), preference customers pass through all NR rate costs to new plants and facility expansions. In the second (the melded approach), preference customers meld their wholesale cost of power so all industrial loads, both existing and new, bear a portion of the higher NR rate.

The EIS showed for Alternative 5.3 that removal of the higher rate requirement would increase Northwest industrial load growth. The greatest growth was forecast to occur in the pulp and paper industry. BPA resource needs would grow by about 290 megawatts. This could cause BPA to acquire some of the resources in the next level of its resource stack a few years earlier than without such load growth. Environmental impacts could occur due to construction of new industrial plants and to the chemicals and processes used. However, impacts would be limited because air, water, land, and other effects of industrial processes are subject to Federal, State, and local regulation.

For Alternative 5.4, regional industrial load growth would be a little smaller than under existing contract provisions. BPA's resource acquisition needs would be decreased by between 73 and 116 megawatts by 2008, an insignificant amount compared to total BPA sales. A portion of this decrease in new industrial load would be due to substitution of other fuels for electricity.

BPA will not amend the existing power sales contracts to adopt these alternatives. BPA will not propose any legislative change or eliminate of section 3(13) of the Northwest Power Act to Congress at this time. Existing NLSL contract provisions require a great deal of case-specific interpretation, just as the contract provisions interpret the Northwest Power Act NLSL provisions. BPA has developed a number of practices for interpreting the power sales contracts in light of actual situations to determine if a load is an NLSL or not. These practices were summarized in a letter dated May 23, 1986, from BPA to interested parties; also see the EIS. Case-specific interpretation of the contracts introduces uncertainty into BPA's and utilities' planning processes. However, it also allows BPA and utilities to tailor service to the needs of the individual industrial consumer. BPA and interested parties may address NLSL issues in the upcoming contract renegotiation process by discussing technical clarifications or improvements to the existing provisions.

CONCLUSION

Based on the analysis in the Final EIS on Initial Northwest Power Act Power Sales Contracts and the comments received from the public in their review of the draft EIS, BPA has decided not to propose any amendments to the existing contracts. To obtain the environmental benefits identified in the EIS from enhanced enforcement of the NWPPC's Protected Areas Rule, BPA will undertake a policy development process to establish a consistent BPA policy for enforcement of the Rule.

In addition to providing the analytical basis for BPA's decision not to amend the contracts, the Final EIS analysis documents the impacts of other proposals concerning service under the contracts. This analysis provides NEPA documentation for specific proposals, such as the proposals to establish "definitive service criteria" for service to the first quartile of DSI load, and to establish BPA practices for treatment of DSI expansion loads that are served by retail utilities.

The completion of this process, and BPA's decision as to further actions it will take, concludes BPA's actions in response to the order of the Ninth Circuit of the United States Court of Appeals in its decision in the case of *Forelaws on Board v. Johnson*, 743 F.2d 677 (1984).

I have reviewed and hereby affirm and approve this Record of Decision as supporting my decision to decline proposing amendments to existing utility and DSI power sales contracts as specified above, and to continue operating under those utility and DSI power sales contracts and the Residential Purchase and Sale Agreements, and to begin a policy development process to establish a comprehensive BPA policy for enforcement of the NWPPC's Protected Areas Rule.

Issued at Portland, Oregon, April 23, 1992.

Steven G. Hickok,

Acting Administrator, Bonneville Power Administration.

[FR Doc. 92–10990 Filed 5–8–92; 8:45 a.m.]

BILLING CODE 6450–01–M

Savannah River Field Office (SR), Financial Assistance Award; Intent to Award a Noncompetitive Grant

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive award of grant.

SUMMARY: The DOE announces that it plans to award a grant to South Carolina State College, Orangeburg, South Carolina, for the conduct of research entitled, "Applications of High Transition Temperature Superconductors at the Savannah River Site." The grant will be awarded for a three-year period with DOE support of $340,148. Pursuant to § 600.7(b) and 600.14 of the DOE Assistance Regulations (10 CFR part 600), eligibility

for this award has been limited to South Carolina State College and as a result of acceptance of their unsolicited proposal, DOE has determined that award of a grant is appropriate.

FOR FURTHER INFORMATION CONTACT: Elizabeth T. Martin, Prime Contracts and Financial Assistance Branch, U.S. Department of Energy, Savannah River Field Office, P.O. Box A, Aiken, SC 29802, Telephone: (803) 725-2191.

SUPPLEMENTARY INFORMATION:

Procurement Request Number

09-92SR18273.001

Project Scope

The proposed research is two-fold. It will involve a determination of the applications for SQUIDs (superconducting quantum interference devices) in the development of new or improved sensor technology and will also include the development of a SQUID or other device/structure from the high transition temperature superconducting materials. The research should result in the development of new sensor technology and devices utilizing the high transition temperature superconducting materials that could greatly improve the waste management and non-destructive testing programs. The research will offer undergraduate minority students in physics and technology an opportunity to be involved in research with an industry in South Carolina and will enhance the research program at the College.

South Carolina State College is a Historically Black College or University (HBCU) and falls within the meaning and intent of Executive Orders 12320 and 12677 pertaining to Government assistance to HBCU's. The participation of HBCU's in federally supported programs is relatively limited. In order to overcome some of these limitations, the Executive Orders directed federal agencies to increase the participation of HBCU's in federally-funded programs and to strengthen their capabilities to provide quality education. This award represents an effort to strengthen the HBCU community. DOE has determined that this award on a noncompetitive basis is appropriate.

Issued in Aiken, South Carolina on April 29, 1992.

Robert E. Lynch,

DOE Savannah River Field Office, Head of Contracting Activity Designee.

[FR Doc. 92-10989 Filed 5-8-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER92-466-000, et al.]

Virginia Electric & Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

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

1. Virginia Electric & Power Co.

[Docket No. ER92-466-000]

May 1, 1992.

Take notice that on April 17, 1992, Virginia Electric & Power Company (Virginia Power or the Company) tendered for filing an initial rate schedule in the form of a limited term power purchase agreement (the Agreement) between the Company and Old Dominion Electric Cooperative (Old Dominion) dated November 26, 1991. The schedule provides for Virginia Power to supply Old Dominion with peaking capacity and associated energy for a period beginning January 1, 1993 and ending no later than December 31, 1996. Under the power service arrangement, Virginia Power will supply Old Dominion with firm capacity and energy until such time as Old Dominion's output is available from the Clover Generating Station, which is jointly owned by Virginia Power and Old Dominion. This limited term power sale does not affect the Company's existing rates currently on file with the Commission which are applicable to Old Dominion's supplemental power requirements.

Copies of the filing were served upon Old Dominion and its counsel, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: May 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Sherwood H. Smith, Jr.

[Docket No. ID-2686-000]

May 1, 1992.

Take notice that on April 7, 1992, Sherwood H. Smith, Jr. (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, President/Chairman and Chief Executive Officer—Carolina Power & Light Company
Director—Wachovia Corporation
Trustee—The Northwestern Mutual Life Insurance Company

Comment date: May 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Hanne M. Merriman

[Docket No. ID-2687-000]

May 1, 1992.

Take notice that on April 9, 1992, Hanne M. Merriman (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director—Central Illinois Public Service Company
Director—State Farm Mutual Automobile Insurance Company

Comment date: May 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Tampa Electric Co.

[Docket No. ER92-487-000]

May 4, 1992.

Take notice that on April 28, 1992, Tampa Electric Company (Tampa electric) tendered for filing cost support schedules showing recalculation of the Committed Capacity and Short-Term Power Transmission Service rates under Tampa Electric's agreements to provide qualifying facility transmission service for Mulberry Phosphates Inc. (Mulberry) and Seminole Fertilizer Corporation (Seminole Fertilizer). Tampa Electric states that the recalculated transmission service rates are based on 1991 Form No. 1 data.

Tampa Electric proposes that the recalculated transmission service rates be made effective as of May 1, 1992, under the agreement with Mulberry, and concurrently with the proposed effective date for the agreement with Seminole Fertilizer, *i.e.*, the earlier of October 1, 1992 or the in-service date of the power sale contract between Seminole Fertilizer and Florida Power Corporation. Accordingly, Tampa Electric requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Mulberry, Seminole Fertilizer, and the Florida Public Service Commission.

Comment date: May 15, 1992, in accordance with Standard Paragraph E end of this notice.

5. Gordon R. Lohman

[Docket No. ID-2690-000]

May 4, 1992.

Take notice that on April 29, 1992, Gordon R. Lohman (Applicant) tendered for filing a supplemental application under Section 305(b) of the Federal Power Act to hold the following positions:

Director—Central Illinois Public Service Company
Director—American Brands, Inc.

Comment date: May 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Indianapolis Power & Light Co.

[Docket No. ER92-493-000]

May 4, 1992.

Take notice that on April 29, 1992, Indianapolis Power & Light Company tendered for filing pursuant to § 35.13(b) and (c) of the Commission's Regulations, a Term Extension Supplement to the Eighth Supplemental Agreement to the Interconnection and Facilities Agreement between PSI Energy, Inc. (formerly Public Service Company of Indiana, Inc.) (PSI) and Indianapolis Power & Light Company (IPL) designated as PSI Rate Schedule FPC No. 48 and IPL Rate Schedule FPC No. 2 to become effective June 1, 1992.

The Term Extension Supplement extends the term of the Carmel Tap Point provided for in the Eighth Supplemental Agreement beyond June 1, 1992 until the earlier of June 1, 1993 or a new interconnection agreement between PSI and IPL becomes effective; otherwise, transactions through the Carmel Tap Point shall immediately cease.

IPL request waiver of the notice requirements of § 35.3 pursuant to § 35.11 of the Commission's Regulations and waiver of any other requirements of § 35.13(b) and (c) not satisfied by the filing. PSI concurs in this filing and in IPL's requests for waiver. Copies of the filing were served upon PSI and the Indiana Utility Regulatory Commission.

Comment date: May 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power & Light Co.

[Docket No. ER92-494-000]

May 4, 1992.

Take notice that on April 29, 1992, Florida Power & Light Company (FPL) filed the Agreement for Purchases or Sales of Electric Power and Energy Between Florida Power & Light Company and Oglethorpe Power Corporation. FPL requests an effective date of July 1, 1992.

Comment date: May 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Century Power Corp.

[Docket No. ER92-485-000]

May 4, 1992.

Take notice that on April 27, 1992, Century Power Corporation (Century) filed a Power Sales Agreement between it and Nevada Power Company (Nevada) for the sale by Century to Nevada of capacity and associated energy from Century's 50 percent entitlement in Unit No. 3 of the San Juan Generating Station for the period June 1, 1992 through December 31, 1993.

Comment date: May 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. WestPlains Energy, a Division of UtiliCorp United Inc.

[Docket No. ER92-486-000]

May 4, 1992.

Take notice that on April 27, 1992, WestPlains Energy, a Division of UtiliCorp United Inc. (WestPlains) tendered for filing Service Schedule 92-PFR-82 under which WestPlains will provide purchase for resale service at the purchased power price, as that term is defined in 18 CFR 35.23(b), plus one mile per kilowatt hour (see § 35.23(e) to the Kansas Electric Power Cooperative (KEPCo). WestPlains provides purchase for resale service to other customers at the same rate under the terms of the MOKAN Power Pool Agreement. Waiver of notice has been requested and an effective date of June 1, 1992 has been requested in order to permit the service to go into effect in accordance with the agreement of WestPlains and KEPCo. If waiver is denied, an effective date 60 days after the filing is requested.

Copies of the filing were served upon KEPCo, and the Utilities Division, Kansas Corporation Commission, Topeka, Kansas.

Comment date: May 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Virginia Electric and Power Co.

[Docket No. EC92-15-000]

May 4, 1992.

Take notice that on April 27, 1992, Virginia Electric and Power Company (Applicant) filed an application pursuant to § 203 of the Federal Power Act with the Federal Energy Regulatory Commission for authorization to enter into a Bill of Sale with the Northern Virginia Electric Cooperative (NOVEC) by which Applicant will sell and NOVEC will purchase various electrical facilities including the Sycoline Delivery Point located within NOVEC's service territory. The purchase price is $253,559.

Applicant is incorporated under the laws of the State of Virginia with its principal business office at Richmond, Virginia and is qualified to transact business in the States of Virginia and North Carolina. Applicant is engaged, among other things, in the business of generation, distribution and sale of electric energy in substantial portions of the State of Virginia. Applicant represents that the proposed sale of these facilities will facilitate the efficiency and economy of operation and service to the public by allowing NOVEC to utilize the facilities, now owned by Applicant, to provide electric service to NOVEC's residential and industrial customers.

Comment date: May 19, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Tampa Electric Co.

[Docket No. ER92-488-000]

May 4, 1992.

Take notice that on April 28, 1992, Tampa Electric Company (Tampa Electric) tendered for filing revised cost support schedules showing a change in the daily capacity charge for its scheduled/short-term firm interchange service provided under interchange contracts with Florida Power Corporation, Florida Power & Light Company, Florida Municipal Power Agency, Fort Pierce Utilities Authority, Jacksonville Electric Authority, Kissimmee Utility Authority, Orlando Utilities Commission, Reedy Creek Improvement District, St. Cloud Electric Utilities, Seminole Electric Cooperative, Inc., Utilities Commission of the City of New Smyrna Beach, Utility Board of the City of Key West, and the Cities of Gainesville, Homestead, Lake North, Lakeland, Starke, Tallahassee, and Vero Beach, Florida. Tampa Electric states that the revised daily capacity charge is based on 1991 Form No. 1 data, and is derived by the same method that was utilized in the cost support schedules submitted with the interchange contracts and in all previous annual revisions.

Tampa Electric requests that the revised daily capacity charge be made effective as of May 1, 1992, and therefore requests waiver of the Commission's notice requirements.

Tampa Electric states that a copy of the filing has been served upon each of the above-named parties to interchange contracts with Tampa Electric, as well as the Florida Public Service Commission.

Comment date: May 15, 1992, in accordance with Standard Paragraph E end of this notice.

12. WestPlains Energy a Division of UtiliCorp United Inc.

[Docket No. ER92-482-000]

May 4, 1992.

Take notice that on April 24, 1992, WestPlains Energy a Division of UtiliCorp United Inc. (WestPlains) tendered for filing Service Schedule 92-I-2, Incremental Power Service to the

Kansas Electric Power Cooperative (KEPCo). Incremental Power Service will be available for the months of June through September. Parties will become eligible for the service when they take in excess of the gross monthly deliveries under Service Schedules 91–CWh–2 and 88–TSv–1 for the corresponding month as follows. Incremental service will be available to the C&W, Jewell–Mitchell, NCK, and Smokey Hill cooperatives, for service in each of the months from June through September if their purchases in those months exceeds the higher of their corresponding 1990 or 1991 total monthly deliveries under Service Schedules 91–CWh–2 and 88–TSv–1 for that month. The Ark Valley, CMS, Ninnescah, Norton–Decatur, Sumner–Crowley and Victory Cooperatives will be eligible for service in a month where their deliveries are in excess of their gross monthly deliveries under Service Schedules 91–CWh–2 and 88–TSv–1 for the corresponding month in 1991.

Waiver of notice has been requested and an effective date of June 1, 1992 has been requested in order to permit the service to go into effect in accordance with the agreement of WestPlains and KEPCo. If waiver is denied, an effective date 60 days after the filing is requested.

Copies of this filing were served upon KEPCo, and the Utilities Division, Kansas Corporation Commission, Topeka, Kansas.

Comment date: May 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Co. (Re: Public Service Co. of New Hampshire)

[Docket Nos. EC90–10–007, ER90–143–004, ER90–144–004, ER90–145–004 and EL90–9–004]

May 4, 1992.

Take notice that on April 23, 1992, Northeast Utilities Service Company (NU) tendered for filing Transmission Tariff Nos. 1, 2 and 3 in compliance with the Commission's Orders in section C of its January 29, 1992 Opinion No. 364–A, and section C of its August 9, 1991 Opinion No. 364. The three transmission tariffs provide for transmission services over the combined Northeast Utilities system upon consummation of the merger between Northeast Utilities and Public Service Company of New Hampshire (PSNH). NU has also tendered for filing an Explanatory Statement to explain how the tariffs comply with Opinion Nos. 364 and 364–A. In addition, NU's compliance filing includes a proposed change to the Second Revised Sheet No. 2 of the Non-Firm Transmission Tariff of Public Service Company of New Hampshire, FERC Electric Tariff, Original Volume No. 1. NU requests that its three transmission tariffs and its proposed change to PSNH's transmission tariff be made effective on the date of the consummation of the merger between Northeast Utilities and PSNH.

When effective, NU's three transmission will make transmission service available over the combined NU system companies. NU's Transmission Tariff No. 1 provides for firm transmission service to be available over the combined NU system. NU's Transmission Tariff No. 2 provides for non-firm service to be made available over the combined NU system. NU's Transmission Tariff No. 3 provides for comprehensive transmission service to the transmission dependent utilities that have not entered into separate long-term arrangements with Northeast Utilities.

In coordination with three tariffs, NU is proposing a change to PSNH's existing Non-Firm Transmission Tariff. The proposed change provides that transmission service under the PSNH tariff would not be available for transactions commencing after the effective date of the merger between Northeast Utilities and PSNH. Following the effective merger date, service will be made available under NU's three compliance tariffs filed herewith.

Copies of the filing have been served by mail or hand delivery (where specifically requested) upon all parties on the official service list compiled by the Secretary in this proceeding. This includes delivery to the public utility commissions in all six New England states.

Comment date: May 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Pennsylvania Power & Light Co.

[Docket No. ER92–489–000]

May 4, 1992

Take notice that Pennsylvania Power & Light Company (PP&L) on April 28, 1992, tendered for filing an executed agreement dated as of April 24, 1992, (Agreement), between PP&L and Public Service Electric and Gas Company (PSE&E). PP&L and PSE&G each expect to have available for sale from time to time up to 100% of their respective shares of the capability of the PJM Interconnection to import energy from west of PJM. The Agreement sets forth the terms and conditions under which PP&L sell import capability to PSE&G and PSE&G will sell import capability to PP&L.

PP&L requests waiver of the notice requirements of Section 205 of the Federal Power Act and Section 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of April 24, 1992. Initial service under the Agreement will not begin before the requested effective date.

PP&L states that a copy of its filing was served on PSE&G, the Pennsylvania Public Utility Commission and the New York Public Service Commission.

Comment date: May 15, 1992, in accordance with Standard Paragraph E end of this notice.

15. Virginia Electric and Power Co.

[Docket No. ER92–492–000]

May 4, 1992.

Take notice that on April 29, 1992, Virginia Electric and Power Company tendered for filing a Transmission Service Agreement between Virginia Electric and Power Company and Virginia Municipal Electric Association No. 1 (VMEA). This agreement provides transmission service to VMEA under Rate Schedule TS–M, Which was accepted for filing in Docket No. ER88–131–000.

Copies of the filing were served upon VMEA and the Virginia State Corporation Commission.

Comment date: May 15, 1992, in accordance with Standard paragraph E at the end of this notice.

16. Illinois Power Co.

[Docket No. ER92–490–000]

May 4, 1992.

Take notice that on April 29, 1992, Illinois Power Company (the Company) tendered for filing proposed changes in the following rate schedules:

Rate Schedule FERC No. 113, applicable to the Soyland Power Cooperative, Inc.

The proposed changes would delete Illinois Power's Hydraulic Power Generation and add the Clinton Power Plant, nuclear generation jointly owned by Illinois Power and Soyland Power, to the generation serving the Illinois Power/Soyland Power Pool.

Copies of this filing were served upon Soyland Power Cooperative, Inc. and the Illinois Commerce Commission, Springfield, Illinois.

Comment date: May 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Polk Power Partners, L.P., a Delaware Limited Partnership

[Docket No. QF92–54–001]

May 4, 1992

On April 28, 1992, Polk Power Partners, L.P., a Delaware Limited Partnership of 23293 South Pointe Drive, Suite 100, Laguna Hills, California 92653,

and 1616 Woodall Rogers Freeway, P.O. Box 660164, Dallas, Texas 75202, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to Section 292.297(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Polk County Florida, and will consist of a combustion turbine generator, and extraction/condensing steam turbine generator (STG), a non-supplementary fired heat recovery boiler and a supplementary fired heat recovery boiler (SFHRB). Steam recovered from the STG and SFHRB will be used for the production of liquid carbon dioxide. The net electric power production capacity of the facility will be approximately 119 MW. The primary energy source will be natural gas. Construction of the facility is expected to commence in September of 1992.

Comment date: June 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

18. Mid-Continent Area Power Pool

[Docket No. ER92-483-000]

May 4, 1992

Take notice that on April 27, 1992, the Mid-Continent Area Power Pool (MAPP) filed on behalf of the investor-owned public utility members of MAPP revisions to certain pool rate schedules. The Schedules affected include Schedule B (Seasonal Participation Power), Schedule H (Peaking Power), Schedule I (Short Term), Schedule K (System Participation Power), and Schedule M (General Purpose Energy).

The revisions have been approved by the members of the pool and MAPP requests an effective date of May 1, 1992.

Comment date: May 15, 1992, in accordance with Standard Paragraph E at the end of this notice.

19. Pacific Gas and Electric Co.

[Docket No. ER92-491-000]

May 4, 1992.

Take notice that on April 29, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing a letter agreement resolving disputes regarding the nature of transmission service to the Lawrence Livermore National Laboratory (LLNL). The LLNL Settlement Agreement, between the Western Area Power Administration (Western), the Department of Energy, San Francisco Field Office (DOE/SF) and PG&E, establishes prices and conditions under which PG&E will provide transmission service for LLNL's deliveries from Western.

PG&E has requested the appropriate waivers so as to allow this rate schedule change to become effective on June 18, 1991.

Copies of this filing have been served upon DOE/SF, Western, the CPUC, and the parties to the Service List to FERC Docket No. ER92-491-000.

Comment date: May 15, 1992, 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. 92-10959 Filed 5-8-92; 8:45 am]

BILLING CODE 6717-01-M

Application Filed With the Commission

May 5, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Applications:* Requests for Extension of Time to Commence and Complete Project Construction.

b. *Project Nos:* 4586-015 and 4587-028.

c. *Date Filed:* April 8, 1992.

d. *Applicant:* City of Tacoma.

e. *Name of Project:* 4586-015—Swamp Creek Project; 4587-028—Ruth Creek Project

f. *Location:* 4586-015—Swamp Creek Project, located on Swamp Creek in Whatcom County, Washington; 4587-028—Ruth Creek Project, located on Ruth Creek in Whatcom County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r) and Public Law No. 101-155, 103 Stat. 935 (1989).

h. *Applicant Contact:* Tacoma Public Utilities, Light Division, Attn: Steven J. Klein, 3628 South 35th Street, P.O. Box 11007, Tacoma, WA 98411, (206) 593-8295.

i. *FERC Contact:* Regina Saizan, (202) 219-2673.

j. *Comment Date:* May 29, 1992.

k. *Description of Request:* The licensee for the subject projects has requested that the deadlines for commencement of construction at FERC Project Nos. 4586 and 4587 be extended for an additional two-year period pursuant to Public Law No. 101-155, 103 Stat. 935 (1989). The licensee shall develop the subject projects in conjunction with two other projects (Project Nos. 4738 and 4628) in order to coordinate the planning, design, and construction schedules for all four projects. The licensee states that coordinating the four projects would have significant financial and environmental advantage.

1. This notice also consists of the following standard paragraphs: B, C, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "Comments," "Recommendations for Terms and Conditions," "Notice of Intent to File Competing Application," "Competing Applications," "Protests" or "Motion to Intervene," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: The Director, Division of Project Compliance and Administration, Office of Hydropower Licensing, Federal Energy Regulatory Commission, ATTN: HL-21,

room 1148 UCP, at the above address. A notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 92-10882 Filed 5-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI86-56-004, et al.]

Citizens Gas Supply Corp., et al.; Natural Gas Certificate Filings

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

1. Citizens Gas Supply Corp.

[Docket No. CI86-56-004]

May 1, 1992.

Take notice that on April 27, 1992, Citizens Gas Supply Corporation (Citizens) of 530 Atlantic Ave., Boston, MA 02210, filed applications under sections 4 and 7 of the Natural Gas Act to amend its blanket certificate issued in Docket No. CI86-56-003. Citizens requests amendment of its certificate to cover sales in interstate commerce for resale of imported natural gas, liquified natural gas, and natural gas purchased from natural gas pipelines, intrastate pipelines, and LDCs. Citizens' application is on file with the Commission and open for public inspection.

Comment date: May 21, 1992, in accordance with Standard Paragraph J at the end of this notice.

Mesa Operating Limited Partnership

[Docket No. CI91-107-000. *et al.*] [1]

May 1, 1992.

Take notice that Mesa Operating Limited Partnership (Mesa) filed applications under section 7 of the Natural Gas Act for authorization to terminate certificates. As shown in the attachment, Mesa assigned its interest in certain properties to Seagull Midcon Inc. and Samson Resources. Mesa's applications are on file with the Commission and open for public inspection.

Comment date: May 15, 1992, in accordance with Standard Paragraph J at the end of this notice.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI91-107-000 (CI78-863), D, July 22, 1991.	Mesa Operating Limited Partnership 2600 Trammell Crow Center, 2001 Ross Avenue, Dallas, Texas 78701.	Missisippi River Transmission Company, Little Washita Field, Grady Country, Oklahoma.	Assigned 3-8-91 to Seagull Midcon Inc.
CI91-109-000 (CI84-276), D, July 22, 1991.	Mesa Operating Limited Partnership	Natural Gas Pipeline Company of America, West Chester Field, Woodward Country, Oklahoma.	Assigned 3-1-91 to Samson Resources.
CI91-109-000 (CI84-283), D, July 22, 1991.	Mesa Operating Limited Partnership	Phillips 66 Natural Gas Company, Arkla Gas Company, KN Energy, Natural Gas Pipeline Company of America and Ringwood Gathering Company, Texas-Hugoton Field, Sherman County, Texas.	Assigned 3-1-91 to Samson Resources.
CI91-109-000 (CI84-284), D,	Mesa Operating Limited Partnership	Phillips 66 Natural Gas Company, Texas-Hugoton Field, Hansford County, Texas.	Assigned 3-1-91 to Samson Resources.
CI91-109-000 (CI84-317), D, July 22, 1991.	Mesa Operating Limited Partnership	Mesa Operating Limited Partnership, Ringwood Field, Major County, Oklahoma.	Assigned 3-1-91 to Samson Resources.
CI91-109-000 (CI62-113), D, July 22, 1991.	Mesa Operating Limited Partnership	Natural Gas Pipeline Company of America, West Chester Field, Woodward County, Oklahoma.	Assigned 3-1-91 to Samson Resources.
CI91-109-000 (CI77-414), D, July 22, 1991.	Mesa Operating Limited Partnership	Arkla Energy Resources, Erick Field, Beckham County, Oklahoma.	Assigned 3-1-91 to Samson Resources.
CI91-109-000 (CI64-1381), D, July 22, 1991.	Mesa Operating Limited Partnership	Arkla Energy Resources, Erick Field, Beckham County, Oklahoma.	Assigned 3-1-91 to Samson Resources.
CI91-109-000 (CI64-1422), D, July 22, 1991.	Mesa Operating Limited Partnership	Ringwood Gathering Company, Arkla Energy Resources, KN Energy and Natural Gas Pipeline Company of America, Ringwood Field, Major County, Oklahoma.	Assigned 3-1-91 to Samon Resources.
CI91-109-000 (CI65-123), D, July 22, 1991.	Mesa Operating Limited Partnership	KN Energy, Northeast Boyd and Dombey Fields, Beaver County, Oklahoma.	Assigned 3-1-91 to Samson Resources.
CI91-109-000 (CI63-1182), D, July 22, 1991.	Mesa Operating Limited Partnership	Arkla Energy Resources, Erick Field, Beckham County, Oklahoma.	Assigned 3-1-91 to Samson Resources,
CI91-109-000 (CI84-305), D, July 22, 1991.	Mesa Operating Limited Partnership	Mesa Operating Limited Partnership, Ringwood Field, Major County, Oklahoma.	Assigned 3-1-91 to Samson Resources.

3. Florida Gas Transmission Co.

[Docket No. CP92–473–000]

May 1, 1992.

Take notice that on April 29, 1992, Florida Gas Transmission Company (FGT) P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP92–473–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a new meter station and to realign certain quantities of natural gas for Peoples Gas System, Inc. (Peoples), under its blanket certificate issued in Docket No. CP82–553–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

FGT proposes to construct and operate a new meter station in Lake County, Florida, referred to as the Lake Murphy delivery point, to accommodate jurisdictional gas deliveries to Peoples under an existing firm sales service agreement (Rate Schedule G) and an existing preferred sales service agreement (Rate Schedule I) and to realign certain volumes of natural gas under the G sales service agreement. Specifically, FGT proposes to increase Peoples' maximum daily contract quantities for its Eustis Division (which FGT indicates contains the new delivery point) by 100,610 therms during the months of November through March and by 55,940 therms during April and by decreasing the maximum daily contract quantities for the Daytona Beach Division by 2,560 therms during the months of November through March and 44,980 therms during April and for the Orlando Division by 98,050 therms during the months of November through March and 10,960 therms during April.

FGT states that the proposed construction and realignment was requested by Peoples to accommodate the geographic shift of its market requirements. FGT also states that the proposed construction and realignment would not increase total gas deliveries to Peoples nor would it increase the current authorized level of service. It is also indicated that the realignment would not impact FGT's peak day or annual deliveries.

It is indicated that the Lake Murphy delivery point would include a 6-inch turbine meter, two side valves, and any other necessary appurtenant facilities to accommodate the measurement of gas, up to 1,392 Mcf per hour at line pressure. FGT states that Peoples would reimburse it for all costs directly and indirectly incurred by FGT for the construction costs of the meter station. It is estimated that the total cost of construction would be $263,600, inclusive of tax gross-up.

Comment date: June 15, 1992, in accordance with Standard Paragraph G at the end of this notice.

4. CNG Transmission Corp.

[Docket No. CP92–467–000]

May 1, 1992.

Take notice that on April 27, 1992, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP92–467–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a portion of the sales and standby services rendered by CNG to The Peoples Natural Gas Company (Peoples) and to Washington Gas Light Company (WGL), all as more fully set forth in the application on file with the Commission and open to public inspection.

CNB states that Peoples has elected to convert 15,000 dekatherms (Dt) per day of sales and standby service entitlements under CNG Rate Schedule RQ to firm transportation service by CNG. CNG also states that WGL, has elected to convert 20,000 Dt per day of sales and standby service entitlements under CNG Rate Schedule CD to firm transportation service. CNG requests authorization to abandon sales and standby service corresponding to the converted quantities, effective April 1, 1991.

Comment date: May 22, 1992, in accordance with Standard Paragraph F at the end of this notice.

5. Florida Gas Transmission Co.

[Docket No. CP92–469–000]

May 1, 1992.

Take notice that on April 28, 1992, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP92–469–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to upgrade an existing meter station used for deliveries of natural gas to Peoples Gas System, Inc. (Peoples), in Polk County, Florida, and to realign the delivery of certain volumes, under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, FGT proposes to upgrade the Lakeland North meter station, which serves as a delivery point for Peoples, in response to a request from Peoples. It is stated that the upgrade entails the replacement of the existing meter with an 8-inch turbine meter and appurtenant facilities, which would accomodate the measurement of gas up to 2.485 MMcf per hour at line pressure, and a new 6-inch tap and 50 feet of 6-inch connecting pipe, located on FGT's 16-inch St. Petersburg lateral in Polk County. FGT asserts that the reason for the proposal is to accomodate a geographic shift in Peoples' market requirements. It is further stated that the upgraded facilities would allow FGT to increase deliveries to Peoples at the Lakeland Division and to decrease deliveries to Peoples at the St. Petersburg and Tampa Division, all part of FGT's firm sales to Peoples under FGT's Rate Schedule G. The cost of the proposed replacement is estimated at $212,198, for which FGT would be reimbursed by Peoples. It is stated that the realignment and replacement of facilities would not result in any increase of Peoples' maximum daily contract quantity from FGT, and that FGT's other customers would not be disadvantaged.

Comment date: June 15, 1992, in accordance with Standard Paragraph G at the end of this notice.

6. Tennessee Gas Pipeline Co.

[Docket No. CP92–471–000]

May 1, 1992.

Take notice that on April 28, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed a prior notice request with the Commission in Docket No. CP92–471–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a delivery point for a natural gas transportation service to Penntech Papers, Inc. (Penntech), an end-user, under the blanket certificates issued in Docket Nos. CP82–413–000 and CP87–115–000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Tennessee proposes to construct and operate a six-inch hot tap as a delivery point on its existing right-of-way in Elk County, Pennsylvania, for an interruptible transportation service to Penntech under an April 13, 1992, transportation agreement. Tennessee would deliver up to 10,000 dekatherms of natural gas daily and up to 3,650,000 dekatherms annually to Penntech pursuant to Tennessee's FERC Rate Schedule IT. Tennessee states that Penntech would reimburse Tennessee for the estimated $26,000 in construction costs for the delivery point. Tennessee

also states that its FERC tariff allows the establishment of additional delivery points.

Comment date: June 15, 1992, in accordance with Standard Paragraph G at the end of the notice.

7. Texas Eastern Transmission Corp. and Trunkline Gas Co.

[Docket Nos. CP92-459-000 and CP92-460-000]

May 1, 1992.

Take notice that on April 21, 1992, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056-5310 and Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket Nos. CP92-459-000 and CP92-460-000, respectively, applications pursuant to section 7(c) and section 7(b) of the Natural Gas Act for a certificate of public convenience and necessity and a request for an order permitting and approving abandonment, authorizing Trunkline to abandon by sale its ownership interest the "Lebanon Lateral" and for Texas Eastern to acquire, operate, and provide service on Trunkline's Lebanon Lateral interests, together with other appurtenant arrangements to implement the abandonment and acquisition, all as more fully set forth in the application which is on file and open to public inspection.

It is stated that the Commission authorized Trunkline by order dated January 17, 1991, in Docket No. CP88-178-002, to operate a 30" pipeline lateral which extends from an interconnection with Panhandle Eastern Pipe Line Company (Panhandle) near Gas City in Grant County, Indiana, approximately 53 miles to a point near Glen Karn, Ohio. It is further stated that the order also authorized Trunkline to operate its 50 percent ownership interest in a 36" extension of the above pipeline lateral which extends approximately 61 miles from Glen Karn to its terminus at interconnections with Texas Eastern, CNG Transmission Corporation (CNG), and Columbia Gas Transmission Corporation (Columbia) near Lebanon, in Warren County Ohio.[2] It is indicated that the wholly-owned and jointly owned lateral segments are known collectively as the Lebanon Lateral. Applicants state that, in addition to the Lebanon Lateral pipeline facilities, Trunkline also owns a 100 percent interest in a check meter at Glen Karn, and a 50 percent interest in the Castine Meter Station, in Darke County, Ohio; the Farmersville Meter Station, in Montgomery County, Ohio; and the Red Lion and Lebanon Meter Stations in Warren County, Ohio.

Trunkline and Texas Eastern (together referred to as Applicants) state that the January 17, 1991, order in Docket No. CP88-178-000 also authorized Trunkline to construct, own, and operate 5,000 horsepower (hp) of compression at the Gas City Compressor Station, near the western terminus of the pipeline. It is explained that Trunkline is currently installing 2,700 hp of the authorized compression, which, when completed, will increase Trunkline's share of Lebanon Lateral capacity from 240,000 Mcf per day (Mcfd) to 300,000 Mcfd. It is indicated that installation of the remainder of the compression is being deferred.

Applications request the following specific authorizations:

- Authorization for Trunkline to abandon by sale to Texas Eastern the Lebanon Lateral facilities pursuant to the terms of a Purchase and Sale Agreement between them;
- Authorization for Trunkline to amend its existing transportation contracts for services utilizing the Lebanon Extension facilities to change the delivery point for those contracts to Tuscola, Illinois, and a waiver of the Commission's Regulations to permit such amendments without affecting the existing transportation priorities of such contracts;
- Authorization for Texas Eastern to acquire, own, and operate the Lebanon Lateral facilities pursuant to the terms of the Purchase and Sale Agreement;
- Authorization for Texas Eastern to succeed to Trunkline's existing authorization to construct additional compression at Gas City up to a maximum of 5,000 hp and an extension of time until November 1, 1994, within which such facilities must be installed and operational;
- Authorization for Texas Eastern to provide open access, incremental transportation service utilizing the acquired Lebanon Lateral pursuant to the terms and conditions of Texas Eastern's existing blanket open-access certificate and new proposed open-access Rate Schedules LLT-1 and LLT-2, and related forms of service agreements proposed thereunder;
- Authorization for Texas Eastern to charge shippers the initial rates under the proposed Rate Schedules LLT-1 and LLT-2, effective November 1, 1992 and November 1, 1994;
- Authorization to treat the capacity associated with the existing 150,000 Mcfd of firm transportation service currently provided by Trunkline to Texas Eastern for its system capacity at the initial rates under the proposed new Rate Schedule LLT-1, and to treat the associated costs as comparable to Account No. 858 costs, with the result that no change is currently proposed in Texas Eastern's terms and conditions of service or rates associated with the proposed acquisition of the Lebanon Lateral.

Consistent with their Purchase and Sale Agreement, Trunkline and Texas Eastern request an effective date of November 1, 1992, for the transfer of Lebanon Lateral facilities. It is indicated that the facilities would be transferred and accounted for at net book value as of October 31, 1992 (estimated at $86,056,447).

Applicants intend that Texas Eastern would succeed to Trunkline's existing authorization to install the remaining 2,300 hp of compression at Gas City, Indiana. Applicants explain that they now anticipate that customer needs and timing requirements for transportation services will dictate construction of the remaining authorized compression for an in-service date of November 1994, rather than January 17, 1993, as is required by the existing authorization.

Applicants state that the capacity of the Lebanon Lateral is currently committed, in part, to firm transportation for Texas Eastern, and, in part, to other existing or prospective firm service customers. Texas Eastern proposes to treat all Lebanon Lateral capacity, after acquisition, in a similar manner—as capacity which is incremental to its existing system. To permit this, Texas Eastern proposes to amend its existing FT-1 and IT-1 rate schedules so that the "Applicability" sections specifically exclude Lebanon Lateral service. (The rate schedules currently apply to transportation on all Texas Eastern facilities.) Texas Eastern asserts that this will best serve the expectations and recognize the prior commitments made by Lebanon Lateral shippers. Insofar as existing Lebanon Lateral shippers are concerned, Texas Eastern proposes to succeed Trunkline in all agreements between Trunkline and ANR relating to service on the lateral.

Texas Eastern further proposes to render service on the Lebanon Lateral facilities under new proposed rate schedules LLT-1 and LLT-2. Texas Eastern notes that these are open access rate schedules patterned after its existing approved Rate Schedules FT-1 and IT-1. In conjunction with the services to be provided under the

[2] Trunkline and ANR Pipeline Company (ANR) each own a 50 percent undivided interest in the jointly owned lateral.

proposed rate schedules, Texas Eastern proposes to maintain, as of November 1, 1992, Trunkline's pre-existing queue for service on the Lebanon Lateral. Further, Texas Eastern states that it would execute LLT-1 or LLT-2 agreements with all existing Lebanon Lateral shippers. New requests for service would be placed in a queue separate from Texas Eastern's existing system queue under Rate Schedules FT-1 and IT-1. For firm and interruptible transportation service on the Lebanon Lateral, Texas Eastern proposes to charge the following initial rates:

Rate Schedule LLT-1		(per dt) 11/1/92	(per dt) 11/1/94
Reservation charge	Max	$5.4530	$4.4480
	Min	.0000	.0000
Commodity charge	Max	.0010	.0025
	Min	.0010	.0025
Rate Schedule LLT-2			
Commodity charge	Max	.1803	.1488
	Min	.0010	.0010

Texas Eastern notes that it is not proposing to change any existing rate in conjunction with the proposed acquisition and that the transaction will have no negative impact on existing customers.

Texas Eastern notes that it has a pending application before the Commission in Docket No. CP92-184-000 *et al.* in which it proposes to render an integrated transportation service (ITP) for 6 shippers. Although it is intended that these shipper will use Lebanon Lateral facilities, Texas Eastern asserts that the proposed acquisition is independent of the ITP project. Texas Eastern states that approval of the acquisition would cause a shifting of rate components associated with the ITP service but would not cause any change in the overall rate to ITP shippers.

Trunkline states that since the proposed sale is structured so that Texas Eastern will, in effect, simply substitute for Trunkline's current role, Trunkline's will experience no change in rates or service or any negative impact.

Comment date: May 22, 1992, in accordance with Standard Paragraph F at the end of this notice.

8. Colorado Interstate Gas Co.

[Docket No. CP92-470-000]

May 4, 1992.

Take notice that on April 28, 1992, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP92-470-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct a delivery facility under CIG's blanket certificate issued in Docket No. CP83-21-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, CIG proposes to construct and operate a delivery point at the Amoco Plant in Adams County, Colorado. CIG states that it would use the facilities to deliver up to 40,000 Mcf of natural gas per day, yon a firm basis, to Snyder Oil Corporation (Snyder). CIG further states that it would receive the natural gas from Snyder at the Enterprise receipt point in Weld County, Colorado and transport the natural gas to the Amoco Plant for Snyder pursuant to part 284 of the Commission's Regulations. CIG would construct approximately 23 miles of 16-inch pipeline pursuant to it blanket construction authorization to enable it to transport the natural gas, it is stated.

CIG states that it has sufficient capacity to provide the firm service with no significant effect on its peak day and annual deliveries and that its tariff does not prohibit this new delivery point.

Comment date: June 18, 1992, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

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 not 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.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-10960 Filed 5-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CS92-3-000, et al.]

Robert D. Chenault et al.; Applications For Small Producer Certificates [1]

April 28, 1992.

Take notice that each of the Applicants listed herein filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before May 12, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protest filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No.	Date filed	Applicant
CS92-3-000	4-9-92	Robert D. Chenault, P.O. Box 282, Bloomfield, NM 87413.
CS92-4-000	4-10-92	Blue Star Royalty, Inc., P.O. Box 2391, Tulsa, OK 74101.
CS69-77-001	[1] 4-22-92	AnSon Company, P.O. Box 24060, Oklahoma City, OK 73124.
CS72-564-000	[2] 4-8-92	Thomas E. Berry, Thomas D. Berry and Malinda Berry Fischer (Thomas E. Berry), c/o Webb Energy, Resources, Inc., P.O. Box 2916, Fort Smith, AR 72913.

[1] This notice does not consolidate for hearing the several matters covered herein.

[1] By letter dated April 7, 1992, Applicant requests that the small producer certificate in Docket No. CS69-77 be amended to reflect the current name of AnSon Company. The certificate was issued in the name of An-Son Corporation.

[2] By letter dated April 2, 1992, Applicant requests amendment of the small producer certificate in Docket No. CS72-564 to include Thomas D. Berry and Malinda Berry Fischer, due to the death of their father Thomas E. Berry.

[FR Doc. 92-10972 Filed 5-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-69-000]

Central Vermont Public Service Corp.; Notice of Filing

May 5, 1992.

Take notice that on April 20, 1992, Central Vermont Public Service Corporation (CVPS) tendered for filing an amendment to its October 10, 1992 filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, 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 18 CFR 385.214). All such motions or protests should be filed on or before May 15, 1992. 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. 92-10899 Filed 5-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ92-3-22-000 and TM92-6-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 5, 1992.

Take notice that CNG Transmission Corporation ("CNG") on May 1, 1992, pursuant to section 4 of the Natural Gas Act, Part 154 of the Commission's regulations, and Sections 12, 15 and 16 of the General Terms and Conditions of CNG's FERC Gas Tariff, filed the following revised tariff sheets to First Revised Volume No. 1 of CNG's FERC as Tariff:

Nineteenth Revised Sheet N. 31
Eleventh Revised Sheet No. 32
Sixth Revised Sheet No. 33
Fifteenth Revised Sheet No. 34
Tenth Revised Sheet No. 35

CNG requests that the Commission allow the proposed tariff revisions to become effective on June 1, 1992, as CNG's regular, quarterly purchased gas adjustment ("PGA"), and its first quarterly transportation cost rate ("TCRA") and transportation fuel adjustments ("TFA").

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before May 12, 1992. 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. 92-10971 Filed 5-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR92-15-000]

Enogex Inc.; Petition for Rate Approval

May 5, 1992.

Take notice that on April 29, 1992, Enogex Inc. filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.5682 per Mcf for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Enogex's petition states that it is an intrastate pipeline within the meaning of Section 2(16) of the NGPA operating in the State of Oklahoma. Enogex further states that its previous rate of $0.25 per Mcf was approved by the Commission in Docket No. ST88-3298-000, *et al.* (49 FERC ¶ 6161,404).

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150

days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties and opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before May 26, 1992. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-10963 Filed 5-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-86-020]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

May 5, 1992.

On April 30, 1992, K N Energy, Inc. ("K N") made its restatement filing pursuant to § 154.303(e) of the Commission's Regulations, 18 CFR § 154.303(e), and in accordance with the Commission's Letter Order issued April 24, 1990, in Docket No. RP87-86, *et al.*

On March 30, 1992, the Commission issued its Order Accepting and Suspending Tariff Sheets Subject To Refund And Establishing A Hearing. Ordering Paragraph (C) stated that "K N is directed to grant Midwest's December 20, 1991, request to renominate its D2 demand levels and to file revised tariff sheets reflecting these D2 levels within 30 days of the date of issuance of this order."

Take notice, that on April 30, 1992, under protest, K N hereby transmitted for filing an original and five copies each of the following tariff sheets to K N's FERC Gas Tariff.

Fourth Revised Volume No. 1:
  Ninth Revised Sheet No. 4
  Ninth Revised Sheet No. 4B
First Revised Volume No. 1-A:
  Fourth Revised Sheet No. 4
First Revised Volume No. 1-B:
  Second Revised Sheet No. 65

K N stated that it has filed Second Revised Tariff Sheet No. 66 under protest; Tariff Sheet No. 66 reflects the allowance of D2 renominations for Midwest Energy Inc. In addition, Ninth Revised Tariff Sheets Nos. 4 and 4B and Fourth Revised Tariff Sheet No. 4 were filed under protest; these tariff sheets are necessary to keep K N revenue neutral if Midwest's Energy Inc.'s D2 renominations are allowed.

On April 29, 1992, K N filed for rehearing to request that the Commission revisit the March 30th Order and retract Ordering Paragraph (C) which directed K N to grant Midwest Energy Inc.'s December 20, 1991 request to renominate its D2 demand levels and further to request clarification, or in the alternative, rehearing that K N will remain revenue neutral and will not have any refund exposure as a result of complying with Odering Paragraph (C).

K N states that copies of the filing were served upon K N's jurisdictional customers and interested bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-10967 Filed 5-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-2-53-000]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

May 5, 1992.

Take notice that K N Energy, Inc. (K N) on May 1, 1992, tendered for filing proposed changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers pursuant to the Purchased Gas Adjustment provision (Section 19) of the General Terms and Conditions of K N's FERC Gas Tariff, First Revised Volume No. 1-B to reflect changes in the Current Adjustment.

K N states that the filing reflects revision of its base tariff rates to reflect projected weighted average gas costs for the quarter ending August 31, 1992. K N states that the proposed effective date is June 1, 1992.

K N states that copies of the filing have been mailed to jurisdictional customers and public bodies.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 12, 1992. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-10969 Filed 5-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-4-15-000]

Mid-Louisiana Gas Co.; Proposed Change of Rates

May 5, 1992.

Take notice that Mid Louisiana Gas Co. ("Mid Louisiana") on May 1, 1992, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheet to become effective March 1, 1992:

Ninety-First Revised Sheet No. 3a,
  Superseding Ninetieth Revised Sheet No. 3a

Mid Louisiana states that the purpose of the filing of Ninety-First Revised Sheet No. 3a is to reflect a $0.2041 per MCF increase in its current cost of gas.

This filing is being made in accordance with Section 19 of Mid Louisiana's FERC Gas Tariff. Mid Louisiana states that copies have been mailed to Mid Louisiana's Jurisdictional Customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a Petition to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before May 12, 1992. 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 Petition to Intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–10961 Filed 5–8–92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-167-000]

Natural Gas Pipeline Co. of America; Changes in FERC Gas Tariff

May 5, 1992.

Take notice that on May 1, 1992, Natural Gas Pipeline Company of America (Natural) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective June 1, 1992:

Fifth Revised Sheet Nos. 180 through 183
Fourth Revised Sheet Nos. 184 and 185

Natural states that the tariff sheets are submitted to update the Monthly Demand Surcharge to reflect semiannual interest adjustment and additional take-or-pay settlement costs that have not been previously included in the earlier filings.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective June 1, 1992.

Natural states that a copy of the filing was mailed to its jurisdictional sales customers, interested state regulatory agencies and all parties set out on the official service list at Docket Nos. RP91–22, RP91–31 and CP89–1281, *et al.*

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, N.E., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before May 12, 1992. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary

[FR Doc. 92–10968 Filed 5–8–92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-7-59-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 5, 1992.

Take notice that on May 1, 1992, Northern Natural Gas Company (Northern) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets with a proposed effective date of May 1, 1992:

Third Revised Volume No. 1

One Hundred Seventh Revised Sheet No. 4B
Seventy-Fifth Revised Sheet No. 4B.1
Third Revised Twenty-Third Revised Sheet No. 4H

Original Volume No. 2

One Hundred Fourteenth Revised Sheet No. 1C

Northern states that the filing herein is an out-of-cycle PGA quarterly filing in accordance with § 154.308 of the Commission's Regulations to adjust Northern's Base Average Commodity Gas Purchase Cost as required by the Commission's Order Nos. 483 and 483–A (PGA Rulemaking).

Northern states that the out-of-cycle filing establishes a base average gas purchased ceiling rate of $1.6859 (Sales Recovery Rate for purposes of the IGIC) which will be in effect from May 1, 1992 through June 30, 1992. Northern states that this filing reflects a $.1700 per MMBtu increase in the ceiling rate previously established in Northern's Out-of-Cycle quarterly filing, Docket No. TQ92–6–59–001, filed on March 31, 1992, to be effectuated April 1, 1992.

Northern states that copies of the filing have been mailed to jurisdictional customers and public bodies.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 12, 1992. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–10962 Filed 5–8–92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR92-14-000]

The Nueces Co.; Petition for Rate Approval

May 5, 1992.

Take notice that on April 24, 1992, the Nueces Company (Nueces) filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of 38.81 cents per Mcf for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Nueces states that it is an intrastate pipeline within the definition of section 2(16) of the NGPA and it owns and operates extensive non-interconnected pipeline systems in the State of Colorado. Nueces states in its petition that it wants to continue to charge its last approved rate for transportation on this system which was approved by the Commission in Docket No. ST89–3130–000.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before May 26, 1992. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–10970 Filed 5–8–92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-166-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

May 5, 1992.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on May 1, 1992 tendered for filing revised tariff sheets as listed on the attached appendix A, which reflect an increase in

rates. Panhandle requests an effective date of June 1, 1992.

Panhandle states that the filing is necessary to avoid a revenue deficiency occasioned by changes in contract demand on Panhandle's system. Many of Panhandle's sales customers have reduced and/or converted their sales contract demands effective November 1, 1992; one of the Company's major customers has converted the entirety of its sales contract demand to transportation service effective March 30, 1992; and, there has been a substantial reduction in those transportation contracts seeking to use the gathering service which, in Opinion No. 369, the Commission required Panhandle to establish.

Panhandle states that its proposed rates are supported by the most current non-gas cost of service applicable to its operations, reflecting a decrease of approximately $28 million when compared to the non-gas cost of service underlying its last rate filing in Docket No. RP91-229-000. Panhandle avers that, while costs have been reduced, the reallocation of costs necessitated principally by changed system contract demands will result in an increased revenue responsibility from existing customers of approximately $80 million.

Panhandle proposes no change in the claimed return on common equity of 14.25% contained in Docket No. RP91-229-000. Panhandle is proposing a change in the depreciation rate for facilities functionalized as gathering from 3.50% to 2.40% for facilities functionalized as transmission-offshore from 6.25% to 1.60%, and for facilities functionalized as transmission-onshore from 2.15% to 1.70%.

The cost classification, cost allocation and rate design aspects are consistent with and dictated by the Commission's Opinion No. 369 and include the use of Fixed Variable form of cost classification, assigning return on common equity, associated taxes and fixed gathering charges to the demand component of rates; the use of one-part demand charges for purposes of rate design; the retention of the Modified Fixed Variable method for cost allocation purposes; the retention of existing zones for sales services, the existing Field Zone for transportation services, and Market Zone transportation service rates based on 100 mile segments; the use of separate firm and interruptible gathering services; Haven Pooling Point rates and tariffs; seasonal sales rates derived on the basis of allocated storage cost; and, backhaul transmission rates.

Panhandle states that miscellaneous changes to Rate Schedule PT-Firm and PT-Interruptible have been proposed. These changes are (1) to provide procedures to establish ownership or allow retention of unauthorized gas in the pipeline system; and, (2) to provide for a system-wide access charge.

Panhandle hereby requests waiver of any provisions of the Commission's Regulations which may be necessary to make the tariff sheets and rates provided for herein effective.

Panhandle states that copies of the filing were served on its jurisdictional sales customers, interested state regulatory agencies, firm shippers, and interruptible shippers who are either intervenor parties in Panhandle's Docket No. RP91-229-000, intervenor parties in Panhandle's Docket Nos. RP91-53, *et al.*, or participants in Panhandle's restructuring meetings. Copies of a Summary Form of the filing were served upon the remainder of the Company's interruptible shippers.

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 petitions or protests should be filed on or before May 12, 1992. 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. 92-10966 Filed 5-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-2-8-000]

South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 5, 1992.

Take notice that on May 1, 1992, South Georgia Natural Gas Company (South Georgia) tendered for filing the following revised sheet to its FERC Gas Tariff, First Revised Volume No. 1:

Ninth Revised Sheet No. 4C

South Georgia states that the proposed tariff sheet is being filed with a proposed effective date of June 1, 1992. The aforesaid tariff sheet reflects changes in South Georgia's fixed take-or-pay surcharge to reflect the prevailing interest rates approved by the Commission. The referenced tariff sheet reflects revised monthly take-or-pay charges with apply to customers electing to amortize their obligation over monthly payments.

South Georgia states that copies of the filing were served upon all of South Georgia's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such motions or protests should be filed on or before May 12, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-10964 Filed 5-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-165-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

May 5, 1992.

Take notice that Trunkline Gas Company (Trunkline) on May 1, 1992 tendered for filing the revised tariff sheets listed on appendix A and appendix B attached to the filing, which reflect an increase in rates. Trunkline requests an effective date of June 1, 1992 for the tariff sheets.

Trunkline states that the filed tariff sheets implement a general increase in the costs of service from that approved in its prior rate case settlement in Docket No. RP89-160-000. Trunkline states that the filing will not provide Trunkline with any substantial overall revenue increase—its recovery of total costs would be virtually unchanged—the reallocation of costs necessitated principally by changed system contract demands will result in an increased responsibility for these costs from existing customers of approximately $61 million

Trunkline states that the primary reasons for filing of the revised tariff sheets is to: (1) Avoid a revenue deficiency occasioned principally by

changes in contract demand on the system; (2) adjust certain aspects of the Company's cost classification, cost allocation and rate design to conform to recent Commission pronouncements; and (3) revised certain of the terms and provisions of the Company's tariff.

Trunkline states that copies of the filing are being served on all jurisdictional customers and applicable state regulatory agencies.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 12, 1992. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-10965 Filed 5-8-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2249-001]

Thomas R. Williams; Filing

May 5, 1992.

Take notice that on May 6, 1991, Thomas R. Williams, (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, Georgia Power Company
Director, BellSouth Corporation
Director, National Life Insurance Company of Vermont
Director, ConAgra, Inc.

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 18 CFR 385.214). All such motions or protests should be filed on or before May 15, 1992. 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. 92-10881 Filed 5-8-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of April 3 Through April 10, 1992

During the Week of April 3 through April 10, 1992, the appeals and applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: May 5, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 3 through April 10, 1992]

Date	Name and location of applicant	Case No.	Type of Submission
Apr. 3, 1992	The 341 Tract Unit of the Citronelle Field, Washington, DC.	LFX-0008	Supplemental implementation. If granted: Refiner absorption rate of the effect of the Citronelle recertification would be established.
Apr. 6, 1992	Southwest Contract Compliance Foundation, Phoenix, AZ.	LFA-0202	Appeal of an information request denial. If granted: The March 13, 1992 Freedom of Information Request Denial issued by the Western Area Power Administration would be rescinded, and Southwest Contract Compliance Foundation would receive access to DOE information
Apr. 7, 1992	Gulf/Airport Store, Auburn, ME	RR300-136	Request for modification/rescission in the Gulf refund proceeding. If granted: The March 20, 1992 Dismissal Letter (Case No. RF300-12340) issued to Airport Store would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
April 8, 1992	Gulf/Young's Gulf, Woodbridge, VA	RR300-137	Request for Modification/Recission in the Gulf Refund Proceeding. If granted: The March 20, 1992 dismissal letter (Case No. RF300-11722) issued to Young's Gulf would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
Apr. 10, 1992	Texaco/Barr's Texaco, Atlantic Beach, FL	RR321-11	Request for Modification/Recission in the Texaco Refund Proceeding. If granted: The March 13, 1992 Dismissal Letter (Case No. RF321-2664) issued to Barr's Texaco would be modified regarding the firm's application for refund submitted in the Texaco Refund Proceeding.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund applicant	Case number
4/3/92 thru 4/10/92.	Crude oil applications received.	RF272-92085 thru RF272-92108
4/3/92 thru 4/10/92.	Gulf Oil refund applications received.	RF300-19881 thru RF300-19895
4/6/92	Satterfield Texaco S.S.	RF321-18563
4/6/92	Indiana Toll Road Commission.	RF304-12954
4/6/92	Indiana Toll Road Commission.	RF304-12955
4/6/92	Art's Boulevard ARCO.	RF304-12956
4/6/92	Cornejo Shell	RF315-10206
4/6/92	Darris Shell Service Station.	RF315-10207
4/6/92	Strubel Brothers Shell.	RF315-10208
4/6/92	Strubel Brothers Shell.	RF315-10209
4/6/92	Martin Oil Company	RF333-29
4/6/92	Richard Keen Super 100.	RF342-190
4/6/92	Woody's Clark Super 191.	RF342-191
4/7/92	Witt Propane Gas Corporation.	RF340-108
4/7/92	Montaup Electric Company.	RF336-42
4/7/92	Charlie's ARCO	RF304-12957
4/7/92	Young's Industries, Inc.	RF321-18564
4/8/92	Wamego, KS	RA272-48

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/name of refund applicant	Case number
4/8/92	Maine School Administrative.	RA272-49
4/8/92	Rohm and Haas Co.	RC272-157
4/8/92	Estate of Frank McCall.	RC272-158
4/8/92	John Dawson Clark Super 100.	RF342-192
4/8/92	Carls Gateway Clark.	RF342-193
4/9/92	Collins Texaco Service.	RF321-18565
4/9/92	Victorian Tire	RF304-12958
4/9/92	Gulf Coast Petroleum.	RF340-109
4/9/92	Gas America Services, Inc.	RF342-194
4/9/92	Leemon Oil Co., Inc.	RF342-195
4/9/92	Mid-State Petroleum, Inc.	RF342-196
4/10/92	Defense Fuel Supply Center.	RF342-197
4/10/92	ARCO Serv Stat/am/pm Mini Mart.	RF304-12959
4/10/92	Gulf View Service	RF304-12960

[FR Doc. 92-10991 Filed 5-8-92; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of April 10 Through April 17, 1992

During the week of April 10 through April 17, 1992, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: May 5, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 10 through April 17, 1992]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 13, 1992	K. D. Moseley, San Bruno, CA	LFA-0203	Appeal of an information request denial. If granted: The March 9, 1992 Freedom of Information Request Denial issued by the Office of the Inspector General would be rescinded, and K. D. Moseley would receive access to a complete copy of the investigative report 988-1080427-H(1).
Apr. 13, 1992	Thomas Williams Washington, DC	LFA-0204	Appeal of an information request denial. If granted: Thomas Williams would receive access to documents related to the discrimination complaint filed by Tracy Shipman and to Dr. Dominic Monetta's annual performance award bonus and certain documents pertaining to the termination of his employment with the Department of Energy.
Apr. 16, 1992	Barton Kaplan, Washington, DC	LFA-0206	Appeal of an information request denial. If granted: The March 13, 1992 Freedom of Information Request Denial issued by the Office of Administrative Services would be rescinded, and Barton Kaplan would receive access to unclassified documents captured during Operation Desert Storm pertaining to Iraq's chemical, nuclear and missile programs.
Apr. 16,	Gulf/C.M. Kinsey Station, Woodbridge, VA	RR300-138	Request for modification/rescission in the Gulf refund proceeding. If granted: The March 20, 1992 Dismissal Letter (Case No. RF300-12452) issued to C. M. Kinsey Station would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
Apr. 16, 1992	James L. Schwab, Spokane, WA	LFA-0207	Appeal of an information request denial. If granted: The April 7, 1992 Freedom of Information Request Denial issued by the Albuquerque Field Office would be rescinded, and James L. Schwab would receive access to DOE Information.
Apr. 16, 1992	Seattle Post-Intelligencer Seattle, WA	LFA-0205	Appeal of an information request denial. If granted: The April 7, 1992 Freedom of Information Request Denial issued by the Office of General Counsel would be rescinded, and the Seattle Post-Intelligencer would receive the access to the terms of the settlement agreement reached in Washington Public Power Power Supply System v. General Electric Company, Case No. C-85-098-JLQ.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund applicant	Case number
4/10/92 thru 4/17/92.	Gulf Oil refund applications received.	RF300-19896 thru RF300-19926
4/10/92 thru 4/17/92.	Atlantic Richfield applications received.	RF304-12962 thru RF304-12976
4/10/92 thru 4/17/92.	Crude oil refund applications received.	RF272-92109 thru RF272-92173
4/13/92	Gulf Coast Petroleum, Inc.	RF335-64
4/13/92	John Lowrimore Oil Company.	RF343-7
4/13/92	Jim's Clark Super 100.	RF342-198
4/13/92	Ashland Petroleum Company.	RF342-199
4/13/92	U.S. Fuel Company	RF321-18566
4/14/92	Oxy USA, Inc.	RF340-112
4/15/92	Bob's L.P. Gas, Inc	RF340-110
4/16/92	Howard's Texaco Service.	RF321-18567
4/16/92	Christie Texaco	RF321-18568
4/16/92	Ferrier Bros. Bridge Company.	RF321-18569
4/17/92	Roche-A-Cri Gas Service.	RF340-113
4/17/92	Mikes Clark Service	RF342-200
4/17/92	C.B. Pitts Texaco	RF321-18570

[FR Doc. 92-10992 Filed 5-8-92; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of April 6 through April 10, 1992

During the week of April 6 through April 10, 1992, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Daniel Grossman 4/6/92 *LFA-0194*

Daniel Grossman filed an Appeal from a partial denial by the Director, Office of Communications of the Department of Energy Field Office, Richland (DOE/RL) of five requests for information which he had submitted under the Freedom of Information Act (FOIA). Grossman requested that the DOE issue determinations in response to two requests for information that had been submitted to DOE headquarters. In considering the Appeal, the DOE found that DOE/RL conducted an adequate search for the documents requested by Grossman where they were reasonably described, and where not reasonably described that DOE/RL attempted to assist Grossman in producing a conforming FOIA request. Other documents were shown to have been destroyed or previously released by the DOE. Thus, regarding these issues, Grossman's appeal was denied. In addition, the appeal was remanded in part, and DOE/RL was ordered to release to Grossman transfer sheets for certain boxes of documents in its possession which list the contents of those boxes. Because no appealable determination had been issued regarding the requests submitted to DOE headquarters, the appeal as it pertained to those requests was dismissed.

The Denver Post, 4/6/92, *LFA-0197*

The Denver Post filed an Appeal from a determination issued by DOE-Rocky Flats concerning a request for information which it submitted under the Freedom of Information Act (FOIA). The DOE determined that Exemption 4 was improperly applied. Subsequent to the filing of the Appeal, DOE-Rocky Flats located a document which may be responsive to the Appellant's FOIA request. Accordingly, the Appeal was remanded.

Refund Applications

Apex Oil Co., Clark Oil & Refining Corp./Milton Poole Clark Super 100 RF342-62; Harley Clark Super 100, RF342-80; Joe's Clark Super 100, RF342-112; Frank's Clark, 4/7/92, RF342-127.

The DOE issued a Decision and Order concerning Applications for Refund filed on behalf of four applicants by Fuel Refunds, Inc. in the Clark Oil & Refining Corp. special refund proceeding. None of the applicants could substantiate his petroleum purchase volume. Accordingly, the four Applications for Refund was denied.

Atlantic Richfield Company/BTU Energy Corporation, 4/8/92, RF304-7737

The DOE issued a Decision and Order granting a refund of $10,697 in principal plus $5,739 in accrued interest for a total of $16,436 to BTU Energy Corporation (BTU), representing a full volumetric refund based upon purchases of 14,554,344 gallons of ARCO butane, propane, and natural gasoline. The firm submitted data which showed banks of unrecovered increased product costs substantially in excess of its full allocable share of the ARCO consent order fund. In addition, a competitive disadvantage analysis revealed that the firm paid prices higher than the market average in all of its purchases of ARCO products. In performing this analysis, the DOE rejected BTU's use of the price data collected by the Energy Information Agency and listed in its Monthly Petroleum Price Reports, on the basis that such data was nation-wide in scope and did not reflect competitive conditions for regional marketers such as BTU. Instead, the DOE extrapolated regional butane and natural gasoline prices from the EIA data, and relied on Platt's/Oil Price Handbook and Oilmanac for regional propane prices.

Bluebell Hot Oil Service, 4/8/92, RR272-89

The DOE issued a Decision and Order denying a Motion for Reconsideration submitted by Federal Refunds, Inc., a private filing service, on behalf of Bluebell Hot Oil Service (Bluebell). The Motion asked the DOE to reconsider a dismissal letter that it had issued to Bluebell in connection with Bluebell's Application for Refund in the Subpart V crude oil special refund proceeding (Case No. RF272-65896). The DOE had dismissed Bluebell's Application because Bluebell had failed to respond to a series of letters from the DOE seeking information about Bluebell's refund claim. The Motion for Reconsideration did not address Bluebell's failure to respond to the DOE; accordingly, the DOE denied the Motion.

Shell Oil Co./Gencarelli Oil Co., Inc., 4/7/92, RF315-10187

The DOE issued a Decision and Order concerning the refund application filed in the Shell Oil Company special refund proceeding by McMickle & Edwards, Inc. (M&E) and Francis Gencarelli on behalf of Gencarelli Oil Co., Inc. Mr. Gencarelli and M&E had been granted a $5,382 refund based on the corporation's purchases during the refund period. Since Mr. Gencarelli was shown to have no ownership interest in Gencarelli Oil Co. Inc., and no authority to represent the corporation's shareholders or directors, the refund granted to him was rescinded. Furthermore, since M&E had failed to exercise due diligence and reasonable care in handling the refund monies, the DOE determined that for the duration of the Shell refund proceeding, all refunds paid in response to claims filed by M&E would be paid directly to the applicants.

Shell Oil Company/Johnson Oil Co., Inc., 4/8/92, RF315-6310

The DOE issued a Decision and Order granting an Application for Refund filed in the Shell Oil Company special refund proceeding on behalf of Johnson Oil Co., Inc. (Johnson). In its application, Johnson asked that it be granted a full volumetric refund of $41,565. The firm submitted a reconstructed cost bank using quarterly average profit margins

and purchase data. Although the DOE usually requires that banks be calculated using monthly data, it accepted Johnson's use of quarterly data as the calculated banks were large enough and increased steadily enough to insure that the firm could not have been able to fully recoup its increased product costs during any month of the refund period. The DOE rejected, however, the applicant's use of annual data to estimate its regular gasoline purchase price from Shell during three years of the refund period. In the competitive disadvantage analysis for regular gasoline submitted by the applicant, the firm's net excess cost calculated using the estimates does not exceed the volumetric refund amount by a large enough margin to insure that the firm was indeed injured to the full extent of its volumetric share. Therefore, the DOE granted the firm a refund equal to the volumetric amount multiplied by the number of gallons purchased at above-market prices in those months where the firm was able to identify the actual price it paid Shell. For its purchases of premium Shell gasoline, the applicant's competitive disadvantage analysis showed that, although Johnson used the same estimation technique, the firm's gross and net excess costs greatly exceeded the full volumetric refund amount for premium gasoline. Therefore, the volumetric refund amount did not overstate the extent of the firm's injury. Accordingly, the DOE granted Johnson a full volumetric refund for its premium gasoline purchases. The total refund granted in this Decision and Order is $10,244, comprised of $7,169 in principal and $3,075 in interest.

Texaco Inc./Marsh Distributing Co., 4/10/92, RR321-109

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed by Marsh Distributing Co. (Marsh) in response to a partial denial of its Application for Refund in the Texaco Inc. special refund proceeding. In Texaco Inc./Berry Oil & Tire Co., 7,518,608 gallons of product were subtracted from the Marsh refund claim. The deduction was based on a finding that granting a refund based on these gallons would have allowed for the double counting of product which was obtained by the company's distributorship through its tank truck dealership. Marsh also requested an additional refund based on purchases of 310,727 gallons of Texaco product which were not included in the firm's original application. The DOE found that the approved gallonage upon which Marsh's refund was based did not include the gallonage that had been subtracted or the additional gallonage submitted with the motion. Accordingly, the Motion for Reconsideration was granted, and Marsh will receive a total additional refund amount under the medium range presumption of injury of $5,630 ($4,306 principal plus $1,324 interest).

W.A. Biba Engineering Company, 4/9/92, RF272-26852, RD272-26852

The DOE issued a Decision and Order granting an Application for Refund filed by W.A. Biba Engineering Company, a highway construction company, in the subpart V crude oil refined proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. In support of their objection, the States submitted an affidavit of an economist stating that, in general, the construction industry was able to pass through increased petroleum costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $29,264.

Refund Applications

[The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.]

Arkadiki Maritime S.A. *et al*	RF272-65359	04/08/92
A. Halcoussis Shipping Ltd	RD272-65361	
Gourdomichalis Maritime S.A	RD272-65366	
Atlantic Richfield Company/Gas'n Save, Inc. *et al*	RR304-33	04/08/92
Atlantic Richfield Company/H&R ARCO Service Station *et al*	RF304-12456	04/07/92
Atlantic Richfield Company/Jim's Manor ARCO *et al*	RF304-11119	04/07/92
Atlantic Richfield Company/Pennsylvania Electric Co	RF304-11884	04/08/92
Atlantic Richfield Company/Phillips Petroleum Co. *et al*	RF304-144	04/08/92
Atlantic Richfield Company/Smith's ARCO *et al*	RF304-11688	04/10/92
Broadwall Management Corp	RF272-38416	04/08/92
Broadwall Management Corp	RD272-38416	
Cheshire County *et al*	RF272-85804	04/10/92
Exxon Corporation/Larry's Exxon	RF307-9853	04/07/92
Johnnie's Truck Stop	RF307-9920	
Garcia's Exxon #1	RF307-9921	
Florida Airmotive, Inc	RF272-41373	04/08/92
Gulf Oil Corporation/Clark Oil Company, Inc	RF300-13868	04/10/92
Gulf Oil Corporation/General Telephone Co. *et al*	RF300-14102	04/09/92
Gulf Oil Corporation/Howard Dickerson	RF300-13653	04/09/92
Howard Dickerson	RF300-13654	
Howard Dickerson	RF300-13655	
Gulf Oil Corporation/Pet, Inc	RF300-12207	04/09/92
Gulf Oil Corporation/Shreve City Gulf	RF300-13590	04/08/92
Shreve City Gulf	RF300-15786	
Shreve City Gulf	RF300-19837	
Liberty County *et al*	RF272-85003	04/06/92
Presque Isle County *et al*	RF272-85206	04/06/92
Quantum Chemical Corporation/E.O. Koch Oil Co. *et al*	RF330-7	04/10/92
Shell Oil Company/P&G Shell *et al*	RF315-316	04/10/92
Tesoro Drilling Company	RF272-31289	04/09/92
Tesoro Petroleum Corporation/Fred Burns Texaco	RF326-81	04/07/92
Texaco Inc./Belmont Texaco *et al*	RF321-806	04/09/92
Texaco Inc./Brentwood Texaco *et al*	RF321-3694	04/07/92
Texaco Inc./East End Texaco *et al*	RF321-8784	04/08/92

Dismissals

The following submissions were dismissed:

Name and Case No.

Al Cleveland Gulf; RF300–13250
Anglo-American Oil; RF330–37
Archdiocese of New York; RF272–90497
Barrow Street Texaco; RF321–8671
Bates Marine & Gulf Sales; RF300–13156
Bell's Grocery; RF300–13253
Belmosto Service Co.; RF300–13242
Bielfeldt Texaco; RF321–8680
Bobby's Texaco; RF321–3426
Boulevard Gulf; RF300–13268
Bud Hill; RF300–13274
Cabrini Medical Center; RF272–89986
Cache Road Texaco; RF321–11129
Canadian Transport Co., Lt.; RF304–3011
Carter's Texaco Service Sta.; RF321–8678
Charlotte Park Texaco; RF321–968
Chuck's Eagle Point ARCO; RF304–4138
Chuck's Texaco; RF321–8404
Dave's Regal ARCO; RF304–8997
Dayco Corp.; RF300–13215
Dependable Dodge Motors, Inc; RF300–13076
Dewey ARCO; RF304–11735
Dix Aurora Texaco; RF321–8610
Dix Texaco; RF321–8609
Dup's Texaco; RF321–10127
East Market Club; RF300–13293
Edgewater Texaco; RF321–1027
El Camino Texaco; RF321–1028
Gail Moore; RF300–13082
Gattuso Towing & Recovering System; RF304–11108
Gibson's Texaco; RF321–8686
Gibson, Dunn & Crutcher; LFA–0201
Hamburg Town & Country Furniture; RF272–90127
Helm's Texaco & Tire; RF321–8692
Hill's Gulf; RF300–13058
Holdeman Land Forming; RF300–13275
Howell's Gulf; RF300–13047
Independent School District #547; RF272–84822
Interstate Texaco; RF321–8600
J.E. Courtney Texaco; RF321–8418
Judy Stump's ARCO; RF304–11061
Kelley's Gulf; RF300–13182
Klosowski Oil Co.; RF300–13080
Lancaster Gulf; RF300–13059
Larry's ARCO; RF304–8810
Lawrence Grocery; RF300–13291
Len's Texaco; RF321–8682
Leo Johnson Contr. Co., Inc.; RF300–13077
Lindenwood Gardens Co-op., Inc.; RF272–89524
Liverman's Gulf; RF300–13186
Lockhaven ARCO; RF304–10471
Luter Packaging Company, Inc.; RF300–13282
Lydon Gulf; RF300–13237
Mackno Fuel Co., Inc.; RF300–13003
Magic Chef Division of Maytag Corporation; RF272–75317
Mallery Oil Co.; RF300–13257
Mayfair Servicenter; RF304–12622
McKnight Fuel Oil, Inc.; RF300–13214
Meador's Texaco; RF321–4491
Meyer's Gulf Service; RF300–12464
Miller Oil Company; RF300–123
Mitchem's Texaco; RF321–3434
Molleur Construction Co., Inc.; RF272–68530
Our Lady of Lourdes Memorial Hospital; RF272–90219
P.L. Martin Texaco Service; RF321–8416
Patterson Gulf; RF300–13271
Perkin's Gulf; RF300–13056
Pete's Texaco; RF321–8690
Petriga Brothers; RF300–13011
Prima Asphalt Concrete, Inc.; RF272–89578
Railway Express Agency, Inc.; RF272–77312
Ray's Town Texaco; RF321–8425
Rebel Acres Stop 'n' Shop; RF321–11127
Red Barn Grocery; RF300–13167
Ric's Freeway Texaco; RF321–4505
Ron Von Striver's Texaco; RF321–4532
Ron Von Striver's Texaco; RF321–4533
Ron Von Striver's Texaco; RF321–4534
Rosamlia Brothers Gulf; RF300–13295
Sheridan County, KS.; RF272–85214
Silva's Texaco Service; RF321–8411
Spring Street Texaco; RF321–8670
Stan's College Texaco; RF321–16436
Taylor Machine Works, Inc.; RF300–13074
Texaco Service Center; RF321–10087
The Terminix International Company L.P.; RF272–59582
Tracy's Texaco; RF321–8675
Triple E Trucking, Inc.; RF300–13066
Tuxedo Club; RF300–13014
Unimart Corporation; RF304–10531
V.J. Rabideau Grocery; RF300–13280
Valley View Grocery; RF300–13089
Voyce Wade; RF315–0269
Wagner Auto Sales, Inc.; RF321–89980
Wasson's Texaco; RF321–4503
Wasson's Texaco; RF321–4502
Wasson's Texaco; RF321–4501
Wasson's Texaco; RF304–4501
West Main Texaco Service; RF321–8672

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: May 4, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92–10993 Filed 5–8–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4132–2]

Agency Informatin Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before June 10, 1992. For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Collection of Economic and Regulatory Impact Support Data: Request for Generic Clearance. (EPA ICR No.: 1170.04; OMB No.: 2070–0034). This is a request for an extension of the expiration date of a currently approved collection.

Abstract: The Toxic Substances Control Act (TSCA) requires the EPA Administrator to consider the economic impacts of actions taken to control the manufacture, distribution, processing, use, or disposal of a chemical substance or mixture that presents an unreasonable risk of injury to human health or the environment. On occasion, EPA conducts surveys requesting that chemical companies voluntarily provide certain economic and regulatory impact data to the Agency. EPA uses this information to determine the potential consequences on the industry of the regulatory actions under consideration by the Agency.

Burden Statement: The burden for this collection of information is estimated to average 1.5 hour per response annually. This estimate includes the time needed to review instructions, complete the form, and review the collection of information.

Respondents: Chemical Manufacturers.

Estimated No. of Respondents: 4,000.

Estimated No. of Responses Per Respondent: 1.

Estimated Total annual burden on Respondents: 6,000 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street, SW., Washington, DC 20460 and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503

Dated: May, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-10977 Filed 5-8-92; 8:45 am]

BILLING CODE 6560-50-M

[SWH-FRL-4131-8]

Hazardous Waste Management System: Land Disposal Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice to Approve Case-by-Case Applications.

SUMMARY: EPA is approving an extension of the May 8, 1992, effective date of the land disposal restrictions applicable to D009 and K106 wastes generated at the following six facilities: BFGoodrich Company, Calvert City, Kentucky; Olin Corporation, Augusta, Georiga and Charleston, Tennessee; PPG Industries, Lake Charles, Louisiana and New Martinsville, West Virgnina; and Vulcan Chemicals, Port Edwards, Wisconsin. This action responds to the applications submitted by these facilities, in conjunction with the Chlorine Institute, under 40 CFR 268.5, which allows any person to request the Administrator to approve, on a case-by-case basis, an extension of the applicable effective date of the land disposal restrictions treatment standards. The effect of this notice is that these six facilities can continue to treat, store, or dispose of their D009 and K106 wastes until May 8, 1993, using current practices and without being subject to the land disposal restrictions applicable to such wastes. If warranted, EPA may grant a renewal of this extension, for up to one year, which, at a maximum, would extend the effective date of the LDR for these wastestreams to May 8, 1994.

EFFECTIVE DATE: This notice becomes effective on May 8, 1992.

ADDRESSES: The official record for this notice is identified as Docket Number F-92-CCPP-FFFFF and is located in room 2427, 401 M Street, SW, Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (202) 260-9327. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424-9346 toll-free (202) 382-3000, locally. For information on specific aspects of this notice contact William J. Kline, Office of Solid Waste, Capacity Programs Branch (OS-321W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308-8440.

SUPPLEMENTARY INFORMATION:

I. Background

A. Congressional Mandate

In 1984, Congress enacted the Hazardous and Solid Waste Amendments (HSWA) which amended the Resource Conservation and Recovery Act (RCRA). Among other things, HSWA required EPA to develop regulations that would impose, on a phased schedule, restrictions on the land disposal of hazardous wastes. In particular, sections 3004(d) through (g) prohibit the land disposal of certain hazardous wastes as of specified dates in order to protect human health and the environment. More specifically, section 3004(g) scheduled the prohibition of the land disposal of those hazardous wastes included in the "Third Thirds" group (which includes hazardous wastes D009 and K106), effective 66 months after the enactment of HSWA (May 8, 1990). In addition, section 3004(m) requires EPA to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized." Wastes that meet the treatment standards established by EPA are not prohibited and may be land disposed.

In developing such a broad program, Congress recognized that adequate alternative treatment, recovery, or disposal capacity which is protective of human health and the environment may not always be available by the applicable statutory effective dates. Therefore, section 3004(h)(2) authorized EPA to grant a national capacity variance (based on the earliest date that such capacity will be available but not to exceed two years) from the effective date which would otherwise apply to specific hazardous wastes. In addition, under section 3004(h)(3), EPA can grant an additional capacity extension of the statutory deadline on a case-by-case basis for up to one year beyond the applicable deadline. Such an extension is renewable once for up to one additional year. On November 7, 1986, EPA published a final rule (51 *FR* 40572) establishing the regulatory framework to implement the land disposal restrictions (LDR) program, including the procedures for submitting case-by-case extension applications.

On June 1, 1990, EPA published a final rule (55 *FR* 22520) establishing the treatment standards for, among other things, D009 and K106 wastes that contain high levels of mercury. After determining that available treatment, recovery, or disposal capacity did not exist at that time for these wastes, EPA granted a two-year national capacity variance for these wastes. Therefore, these wastes could be land disposed until May 8, 1992.

II. Summary of Proposed Notice to Approve Applications

On August 1, 1991, the six facilities addressed in today's notice, along with several other facilities, in conjunction with the Chlorine Institute, submitted case-by-case applications to EPA. The applicants requested a one-year extension of the effective date of the land disposal restrictions applicable to D009 and K106 hazardous wastes consisting of residual wastewaters and other solid wastes derived from the electrolytic mercury cell process. This process is used at these facilities for the production of chlorine. This extension was requested to allow these facilities to construct or otherwise obtain the capacity to enable them to meet the land disposal restrictions treatment standards for D009 and K106 Wastes.

On March 19, 1992, EPA published a notice of intent (57 FR 9634) to approve the applications submitted by the two Olin facilities based upon a determination that Olin had fulfilled the criteria of 40 CFR 268.5(a) which sets forth the required demonstrations to be made in requesting a case-by-case extension of a LDR effective date. In this same notice, EPA proposed to grant the requested one-year extension to five other facilities, pending the receipt of and approval by EPA of documentation demonstrating a binding contractual commitment in accordance with 40 CFR 268.5(a)(2). For four of the five facilities such documentation has been submitted to (and been placed in the docket to the proposal) and approved by EPA. Accordingly, EPA is also granting the extenstion for these four facilities. No final determination is being made today regarding the application submitted by Pioneer Chlor Alkali Company, Inc. The following is a summary of the 40 CFR

268.5(a) demonstrations for those facilities for which EPA today is approving a one-year extension of the LDR effective date of May 8, 1992.

Section 268.5(a)(1). The applicant has made a good-faith effort to locate and contract with treatment, recovery, or disposal facilities nationwide to manage its waste in accordance with the effective date of the applicable restriction (i.e., May 8, 1992).

This demonstration, being identical for all of the facilities requesting an extension, was submitted to EPA as a generic demonstration under the auspices of the Chlorine Institute. As discussed in the proposal of this extension, the Chlorine Institute identified 47 facilities with thermal treatment services that may be able to accept the subject wastes. Of these 47 facilities, only four were identified as capable of metal recovery and therefore potentially capable of treating these wastes and meeting the treatment standard. Of the four facilities, two could not accept the wastes. One other facility, Bethehem Apparatus, indicated that it could accept 150 tons per year of D009 wastes. The fourth facility, Mercury Refining Company (MERECO), has stated in comments on this proposal that it can currently accept a total of 200 drums of D009 wastes per year from the petitioning facilities and requested that the applicants be required to use this capacity. MERECO stated in its comments to the March 19 proposal that EPA should withhold its approval of the requested extension until binding contracts are submitted demonstrating that the available treatment capacity will be used. EPA believes the requirement of a binding contractual commitment is needed in connection with the construction of additional capacity and not as part of the good faith effort to locate capacity. An applicant's good faith effort to locate available treatment capactity may be documented less formally.

MERECO'S present capacity equates to 55 gallons per day (approximately one drum per day). They also indicated, however, they were planning to expand their treatment capacity and in 1993, they expect to be able to allocate up to 600 drums of treatment capacity to these facilities. Even considering such an expansion by MERECO, the quantity of D009 waste being generated by the six facilities being granted today's extension continues to exceed the available commercial capacity to treat this waste. Moreover, after the impending May 8, 1992 LDR effective date for such mercury wastes, EPA anticipates that this capacity will be in great demand from a wide variety of other facilities that, unlike the facilities being approved an extension today, have no other planned treatment capacity. Accordingly, the demonstration that capacity is unavailable has been adequately made. However, we would expect that the facilities being granted an extension today to use such commercial treatment capacity for D009 wastes as may be reasonably made available to them until their planned treatment units are brought on-line, taking into account the practicality of treating small volumes, competing demand from other generators, and other relevant considerations.

Commercial treatment capacity for the K106 wastes was found to be non-existent. See the March 19 proposal (57 FR 9634) for further discussion of this part of the demonstration.

Section 268.5(a)(2). The applicant has entered into a binding contractual commitment to construct or otherwise provide alternative treatment, recovery, or disposal capacity that meets the treatment standards specified in 40 CFR part 268, subpart D or where treatment standards have not been specified, such treatment, recovery, or disposal capacity is protective of human health and the environment.

Each of the facilities has submitted documentation to demonstrate that it has a binding contractual commitment to provide the necessary treatment capacity.

- BFGoodrich has executed a contract with CESA Contractors to construct a thermal unit at its Calvert City, Kentucky facility.
- Olin has a contract with Blount, Inc. to construct the retort unit at its Charleston, Tennessee facility at which the D009 and K106 wastes from both Olin's Augusta, Georgia and Charleston, Tennessee facilities would be treated.
- PPG plans to construct one thermal retort unit at its Lake Charles facility at which the D009 and K106 wastes from both PPG's Lake Charles, Louisiana and New Martinsville, West Virginia facilities would be treated. PPG submitted to EPA documentation of a binding contractual commitment to construct, startup, and operate this unit.
- Vulcan provided EPA with documentation of a binding contractual commitment to purchase, construct, and install a retort unit at its Port Edwards, Wisconsin facility.

Section 268.5(a)(3). Due to circumstances beyond the applicant's control, such alternative capacity cannot reasonably be made available by the applicable effective date. This demonstration may include a showing that the technical and practical difficulties associated with providing the alternative capacity will result in the capacity not being available by the applicable effective date.

Due to circumstances that the Agency considers to be beyond their control, these facilities' thermal treatment units will not be available by the applicable effective date. As discussed in the proposal of this extension, the Chlorine Institute contracted with Hazen Research in the fall of 1990, to develop a treatment unit capable of meeting BDAT. EPA believes the applicants cannot reasonably provide treatment capacity by the effective date, due to technical difficulties in treating these wastes to meet the treatment standards. The applicants have demonstrated to EPA's satisfaction that they aggressively pursued the development of technology capable of treating their wastes to BDAT standards and are actively engaged in the construction of units employing this technology to provide the necessary treatment capacity.

Section 268.5(a)(4). The capacity being constructed or otherwise provided by the applicant will be sufficient to manage the entire quantity of waste that is the subject of the application.

Each of the facilities has demonstrated to EPA's satisfaction that there will be enough treatment capacity to treat all of their D009 and K106 wastes in their planned thermal treatment units.

- BFGoodrich has stated that the thermal treatment unit to be constructed will have a capacity of approximately 300 tons/year to treat all the K106 and D009 waste generated at its Calvert City, Kentucky facility.
- Olin has stated that the thermal treatment unit to be constructed is designed for 300 lbs./hour with an estimated actual annual throughput (including wastes from both Augusta and Charleston) of 1.13 million lbs. The planned retort unit is expected to have excess capacity.
- PPG has stated that the retort unit to be constructed will have a design capacity of 200 lbs./hour (maximum of 400 lbs./hour) to treat the almost 400 tons/year of D009 and K106 wastes generated by both the Lake Charles, Louisiana and New Martinsville, West Virginia facilities. (This capacity

statement has been revised from the proposal in response to PPG's comment.)

• Vulcan has stated that the retort unit to be constructed will have a capacity of approximately 1000 lbs./day and thus adequate capacity to treat the approximately 100,000 lbs./year of K106 and D009 waste generated by its Port Edwards facility.

Section 268.5(a)(5). The applicant provides a detailed schedule for obtaining operating and construction permits or an outline of how and when alternative capacity will be available.

Each of the facilities has provided a detailed schedule for the construction and permitting of their planned thermal treatment units. The schedules are in the public docket for this extension notice.

• BFGoodrich submitted a schedule that provides details regarding the construction and permitting of the retort unit to be installed at its Calvert City, Kentucky facility. As shown in the schedule, BFGoodrich plans to commence construction of the retort unit by August 1, 1992 and expects construction to be completed by March 1, 1993.

• Olin provided EPA with a detailed schedule for the construction and permitting of the retort unit to be constructed at its Charleston, Tennessee facility. Olin expects to begin construction in July 1992 with a completion date in January 1993. Start-up of the retort unit is expected in April 1993.

• PPG provided EPA with a detailed schedule for the construction and permitting of the retort unit to be constructed at its Lake Charles, Louisiana facility. Construction of the unit is anticipated by March 1993. On-line operation of the unit is expected in May 1993.

• Vulcan provided EPA with a detailed schedule for the construction and permitting of the retort unit to be construction at its Port Edwards, Wisconsin facility. Construction is expected to begin by August 1992 with contruction of the unit completed by April 1993.

Section 268.5(a)(b). The applicant has arranged for adequate capacity to manage his waste during an extension, and has documented the lcoation of all sites at which the waste will be managed.

Each of the facilities has demonstrated adequate capacity to manage its waste during the one-year extension period.

• Chemical Waste Management (CWM) has sufficient capacity available at its hazardous waste landfills in Emelle, Alabama and Fort Wayne, Indiana to manage the D009 and K106 wastes generated at BFGoodrich's Calvert City, Kentucky facility during the one-year extension being approved today.

• The GSX Services of South Carolina, Inc. (GSX) hazardous waste landfill located in Pinewood, South Carolina provides sufficient capacity to manage the D009 and K106 wastes generated by Olin's Augusta, Georgia facility during the extension. In addition, Olin has adequate capacity at its on-site landfill in Charleston, Tennessee to manage the waste generated at this facility during the one-year extension.

• The CWM hazardous waste landfill in Emelle, Alabama has sufficient capacity to manage the wastes generated by PPG's Lake Charles, Louisiana facility during the extension being approved today.

• The CWM hazardous waste landfill in Model City, New York has sufficient capacity to manage the D009 and K106 wastes generated at PPG's New Martinsville, West Virginia facility during the extension.

• Chemical Waste Management's (CWM) Adams Center hazardous waste landfill will provide enough capacity to manage the D009 and K106 wastes generated by Vulcan's Port Edwards, Wisconsin facility during this extension.

A commenter to the March 19 proposal of this extension suggested that documentation of sufficient capacity at disposal facilities, beyond the letters provided by the disposal facilities attesting to sufficient capacity, is necessary. EPA believes that a letter provided by the disposal facility is sufficient to make the demonstration of adequate capacity at such facility. Also, if a condition certified to in the application for an extension changes, the applicant must, in accordance with 40 CFR 268.5(f), immediately notify EPA of such change as soon as he has knowledge of such a change.

Section 268.5(a)(7). Any waste managed in a surface impoundment or landfill during the extension period will meet the requirements of 40 CFR 268.5(h)(2).

The landfills at the facilities identified under the section 268.5(a)(6) demonstration as able to be used during the extension period are RCRA permitted and meet the minimum technological requirements of 40 CFR 268.5(h)(2).

III. Consultations with States

In accordance with 40 CFR 268.5(e), EPA consulted with the appropriate State agencies for the States in which the six facilities being granted a one-year case-by-case extension are located. Specifically, EPA consulted with Georgia, Kentucky, Louisiana, Tennessee, West Virginia, and Wisconsin to determine whether these States had any permitting, enforcement, or other concerns regarding the facilities within their jurisdiction that EPA should take into consideration regarding the case-by-case applications. With respect to the facilities addressed in today's **Federal Register** notice, no concerns were identified by the States. One commenter to the March 19, 1992 proposal stated, however, that EPA had not consulted with all the affected States, i.e., those States in which are located the landfills that the applicants intend to use during this extension. EPA interprets "affected States" to mean those in which the facility seeking the extension is located. These States have the most knowledge about the applicant. Also, disposal can occur only at facilities properly authorized by their States, so that States in which disposal occurs have already approved such disposal through the permitting process.

IV. EPA's Action

For the reasons discussed above, EPA believes that each of the following six chlorine manufacturing facilities has satisfied all the requirements for a case-by-case extension of the effective date of the land disposal restrictions applicable to D009 and K106 wastes:

1. BFGoodrich's facility in Calvert City, Kentucky;
2. Olin's facility in Augusta, Georgia;
3. Olin's facility in Charleston, Tennessee;
4. PPG's facility in Lake Charles, Louisiana;
5. PPG's facility in New Martinsville, West Virignia; and
6. Vulcan's facility in Port Edwards, Wisconsin.

Therefore, EPA is granting an extension of the May 8, 1992, effective date of the restrictions on D009 and K106 wastes generated at these facilities. The effect of this extension is that these wastes can continue to be managed in the manner that they are currently handled until May 8, 1993 (unless the extension is renewed for up to one additional year, in which case it would be until May 8, 1994), while the planned treatment units are being constructed and put into service.

As part of the approval of an extension, each applicant must comply with the provisions of 40 CFR 268.5 (f) and (g). Each applicant must submit a monthly progress report that addresses the progress being made toward providing the necessary treatment

capacity, identify any delay or possible delay in developing the capacity, and describe the mitigating actions being taken in response to such an event. EPA must also be notified of any change in the conditions specified in the application. EPA can revoke the extension if the facility fails to make a good-faith effort to meet the schedule for completion, EPA or an authorized State denies or revokes any required permit, conditions certified in the application change, or the facility violates any law or regulations in parts 260–266 and 268.

Progress reports must be submitted to the following address by the 15th day of the month following the month for which the progress report is being submitted: Chief, Capacity Programs Branch, U.S. Environmental Protection Agency, Office of Solid Waste (OS–321W), 401 M Street, SW., Washington, DC 20460.

Today EPA is not taking final action on Pioneer's case-by-case application for an extension of the LDR effective date applicable to the D009 and K106 wastes generated at its St. Gabriel, Louisiana facility, pending further information from Pioneer regarding its efforts to secure a binding contractual commitment to obtain the necessary treatment capacity. Pioneer, thus, remains subject to the LDR treatment standards effective on May 8, 1992.

(Sections 1006, 2002(a), 3001, and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6924))

Dated: May 5, 1992.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

[FR Doc. 92–10974 Filed 5–8–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM docket No.
I		
A. Joy Public Broadcasting Corp.; Lincoln, NE.	BPED-900621MA	92–97
B. Community Family Broadcasting, Inc.; Lincoln, NE.	BPED-910319MA	Q03

Issue heading and Applicants

1. Comparative—Noncommercial Educational FM, A and B
2. Ultimate, A and B

II		
A. The President and Board of Trustees of the Miami University; Reading, OH.	BPED-890530MA	92–98
B. Southwestern Ohio Seniors' Services, Inc.; Reading, OH.	BPED-910412MC.	

Issue Heading and Applicants

1. Comparative—Noncommercial Educational FM, A, B
2. Ultimate, A, B

III		
A. James Killinger Cornick; Marion, VA.	BPH-910311MA	92–96
B. Cope II Broadcasting Partners; Marion, VA.	BPH-910312MF	

Issue heading and Applicants

1. Environmental Impact, B
2. Air Hazard, B
3. Comparative, A, B
4. Ultimate, A, B

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth above. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in queston applies to that particular applicant.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, Room 246, 1919 M Street, NW., Washington, DC 20554 (telephone (202) 659–8657).

W. Jan Gay,

Assistant Chief Audio Services Division, Mass Media Bureau.

[FR Doc. 92–10929 Filed 5–8–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Bryan K. Grove; 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 May 26, 1992.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Bryan K. Grove, Grygla, Minnesota; to acquire an additional 2.08 percent (for a total of 10.64 percent) of the voting shares of Grygla Financial Corporation, Grygla, Minnesota.

Board of Governors of the Federal Reserve System, May 5, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92–10897 Filed 5–8–92; 8:45 am]

BILLING CODE 6210–01–F

Wellington Delaware Financial Corporation, 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 May 29, 1992.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Wellington Delaware Financial Corporation, Dover, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Wellington State Bank, Wellington, Texas.

2. WSB Bancshares, Inc., Wellington, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Wellington Delaware Financial Corporation, Dover, Delaware, and thereby indirectly acquire Wellington State Bank, Wellington, Texas.

Board of Governors of the Federal Reserve System, May 5, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-10898 Filed 5-8-92; 8:45 am]

BILLING CODE 6210-01-F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting

AGENCY: General Accounting Office.

ACTION: Notice.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92-463), as amended, notice is hereby given that a two-day meeting of the Federal Accounting Standards Advisory Board will be held on Thursday, May 28, 1992 and Friday, May 29, 1992, from 9 a.m to 4 p.m. in room 7313 of the General Accounting Office, 441 G St., NW., Washington, DC.

The agenda for the meeting will consist of a review of the minutes of the April 16-17 meeting, a review of an exposure draft on Accounting for Tangible Property Other Than Long Term Fixed Assets of the Federal Government, and a discussion on Uses and Objectives of Federal Accounting. The Board may also have a brief discussion on a staff paper being developed on Liabilities and Other Commitments. We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Staff Director, 401 F St., NW., room 302, Washington, DC 20001, or call (202) 504-3336.

Authority: Federal Advisory Committee Act. Pub. L. No. 92-463, section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101-6.1015 (1990).

Dated: May 5, 1992.

Ronald S. Young

Staff Director.

[FR Doc. 92-10885 Filed 5-8-92; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection under OMB Review

AGENCY: Administration on Developmental Disabilities.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of a joint information collection for the Administration on Developmental Disabilities Protection and Advocacy (DDPA) program and the Protection and Advocacy for Mentally Ill Individuals (PAMII) program. The two programs are administered by the Department of Health and Human Services. The DDPA program by the Administration for Children and Families and the PAMII program by the National Institute of Mental Health (NIMH) in the Alcohol, Drug Abuse, and Mental Health Administration in the Public Health Service.

ADDRESSES: Copies of this Information Collection request may be obtained from Steve Smith, ACF Reports Clearance Officer, by calling (202) 401-9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: The Protection and Advocacy System for Persons with Developmental Disabilities, Program Performance Report and Protection and Advocacy for Mentally Ill Individuals Program Performance Report.

OMB No. 0980-0160.

Description: The two Protection and Advocacy Systems for the Administration on Developmental Disabilities and the Alcohol, Drug Abuse, and Mental Health Administration were established in 1975 under the Developmental Disabilities Assistance and Bill of Rights Act to provide services to persons with developmental disabilities. These systems were expanded in 1986 to provide services to mentally ill persons who are residents of facilities that provide care and treatment. The single-state agency responsible for administering the two programs must annually prepare a report which describes the activities, accomplishments, and expenditures under each of the programs to the DHHS. The information provided by the States will enable the Department to aggregate the information of the two component programs and to prepare and submit the Annual Report on the Developmental Disabilities Programs to the President and the Congress as required by section 107(c) of the Act. The information will provide ADD an overview of program trends and information needed to ascertain whether a State is in compliance with requirements of the Act.

Protection and Advocacy Systems for Persons with Developmental Disabilities, Program Performance Report: (ADD)

Annual Number of Respondents: 56.

Annual Frequency: 1.

Average Burden Hours Per Response: 44.

Total Burden Hours: (ACF) 2,464.

Protection and Advocacy for Mentally Ill Individuals, Program Performance Report: (NIMH) OMB Control Number: 0980-0160.

Annual Number of Respondents: 56.

Annual Frequency: 1.

Average Burden Hours Per Response: 45.

Total Burden Hours: 2520.

Annual Number of Recordkeepers: 56.

Annual Hours Per Recordkeeper: 45.

Total Recordkeeping Hours: 2520.

Total Annual Burden Hours: (NIMH) 5040.

Dated: April 14, 1992.

Naomi B. Marr,

Director, Office of Information and Management Systems.

[FR Doc. 92-10532 Filed 5-8-92; 8:45 am]

BILLING CODE 4130-01-M

Food and Drug Administration

[Docket No 81N-0033]

RIN 0905-AA06

Combination Drug Products Containing Potassium Nitrate and An Anticaries Ingredient; Marketing Status for Over-the-Counter Human Use; Notice of Enforcement Policy

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an enforcement policy allowing over-the-counter (OTC) marketing of oral health care combination drug products containing 5 percent potassium nitrate as a tooth desensitizing ingredient and any single proposed Category I anticaries ingredient. The OTC marketing of such drug products is being permitted pending establishment under the OTC drug review of final monographs for OTC anticaries and oral health care drug products. FDA anticipates that oral health care combination drug products containing 5 percent potassium nitrate as a tooth desensitizing ingredient and any single Category I anticaries ingredient will be determined to be generally recognized as safe and effective and not misbranded.

EFFECTIVE DATE: The enforcement policy is effective May 11, 1992.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 24, 1991 (56 FR 48302), FDA issued an amendment to the tentative final monograph for OTC oral health care drug products and proposed Category I status for a combination product containing 5 percent potassium nitrate and any single Category I anticaries ingredient labeled for the relief of hypersensitive teeth and for the prevention of dental caries (56 FR 48302 at 48343). Category I anticaries active ingredients were proposed in the tentative final monograph for OTC anticaries drug products, published in the **Federal Register** of September 30, 1985, (50 FR 39854) and amended in the **Federal Register** of June 15, 1988 (53 FR 22430).

Because no OTC drug advisory review panel had considered this combination, the agency stated that this specific combination product could not be marketed until the Commissioner stated by notice in the **Federal Register** that the combination has been tentatively determined to be generally recognized as safe and effective and that OTC marketing will be permitted under specified conditions (56 FR 48302 at 48332). Before marketing could begin, the comment period must have ended and another **Federal Register** notice must have been published setting forth the agency's determination concerning marketing before publication of the final rule for OTC oral health care drug products. The agency requested comments and objections by November 25, 1991, regarding this specific combination product.

In response to the proposal, the agency received only one comment regarding this combination product. The comment supported the agency's position that a combination dentifrice containing 5 percent potassium nitrate and a Category I anticaries ingredient is a rational combination. The comment agreed with the agency's conclusion that the submitted data support general recognition of the safety and effectiveness of the combination of ingredients for the specified use. The comment supported the agency's tentative conclusion to allow marketing of such a combination product before publication of a final rule.

In addition, the comment addressed the statement of identity for the combination product. It noted that the statement of identity for OTC tooth desensitizing drug products proposed in § 356.62(a) of the amendment to the tentative final monograph (56 FR 48302 at 48346) is " 'toothpast' (or 'dental gel') 'for sensitive' (or 'hypersensitive') 'teeth.' " The comment also noted that the statement of identity for anticaries drug products proposed in § 355.50(a) of the tentative final monograph for OTC anticaries drug products (50 FR 39854 at 39872) is " 'anticavity' (or 'fluoride') 'dentifrice' (or 'toothpaste').'' The comment stated that using the agency's procedure for combining these two statements of identity as proposed in § 356.66(a) (56 FR 48302 at 48347) results in the following statement of identity for a combination dentifrice containing potassium nitrate and a fluoride ingredient: " 'anticavity' (or 'floride') 'toothpaste for sensitive' (or 'hypersensitive') 'teeth.' " The comment contended that this combined statement of identity would imply that an anticaries (i.e., fluoride) product is Category I for hypersensitive teeth when, in fact, fluoride preparations are Category III for the treatment of dentinal hypersensitivity. The comment argued that such a combined statement of identity could mislead consumers into believing that all fluoride toothpastes provide relief from tooth sensitivity. The comment added that consumers with no sensitivity problem could be misdirected into buying the combination product when a single ingredient fluoride dentifrice would suffice. The comment proposed the following statements of identity for a combination drug product containing potassium nitrate and fluoride: "(1) toothpaste for sensitive teeth with potassium nitrate and fluoride; (2) toothpaste for sensitive teeth and decay prevention; and (3) toothpaste with potassium nitrate for sensitive teeth and fluoride for decay prevention."

The agency agrees with the comment that consumers might be mislead by the labeling of a combination product containing potassium nitrate and any single Category I anticaries ingredient that used the agency procedure for combining the statements of identity currently proposed for potassium nitrate in § 356.62(a) of the tentative final monograph for OTC oral health care drug products and for fluoride ingredients in § 355.50(a) of the tentative final monograph for OTC anticaries drug products. However, the agency does not believe that the comment's first suggested statement of identity, "toothpaste for sensitive teeth with potassium nitrate and fluoride," is appropriate for such a combination product. Without further explanation, this statement indicates that the fluoride might help to relieve dentinal hypersensitivity. Both the first statement above and the third statement of identity suggested by the comment, "toothpaste with potassium nitrate for sensitive teeth and fluoride for decay prevention," are not suitable for use as a statement of identity because ingredient names are not necessary and do not normally appear in this portion of the product's labeling. However, the third suggested statement is informative to consumers and could be used in the non-FDA-required portion of the product's labeling.

The agency believes that the second statement of identity suggested by the comment, 'toothpaste for sensitive teeth and decay prevention," would be more appropriate as a statement of identity than either of the other two suggested statements. The agency believes, however, that the phrase "decay prevention" is imprecise and that the phrases "cavity prevention" is more likely to be understood by consumers. Therefore, the agency intends to revise the labeling for combination drug products containing 5 percent potassium nitrate and any single Category I anticaries active ingredient and include this new labeling in § 356.66(a) of the final monograph, as follows:

For permitted combinations identified in § 356.26(h). The labeling of the product contains the established name of the combination drug, if any, and identifies the product as a (insert dosage form, e.g., "toothpaste" or "dental gel") for (select one of the following: "sesitive" or "hypersensitive") "teeth and cavity prevention."

The agency has also determined that this statement of identity should be used in the labeling of any product marketed pursuant to this notice of enforcement policy.

After carefully reviewing all of the available information concerning this combination product, the agency is issuing a notice of enforcement policy permitting OTC marketing of combination drug products containing 5 percent potassium nitrate and any proposed Category I anticaries ingredient for use in relieving dentinal hypersensitivity and preventing dental caries as proposed in § 356.26(h) (56 FR 48302 at 48343). The agency addressed the safety and effectiveness of such combination drug products in the amendment to the tentative final monograph for OTC oral health care drug products (56 FR 48302 at 48329). The agency believes that there are no unresolved safety or effectiveness issued relating to the OTC use of such a combination product. Accordingly, the agency has determined that it would be inappropriate to continue to bar the interim marketing of such products. The agency's enforcement policy, which is set out in Compliance Policy Guide 7132b.16, relating to OTC marketing of combination drug products containing certain ingredients that are under consideration in FDA's review of OTC drugs makes it clear that FDA may by notice in the **Federal Register** permit interim marketing of products such as the combination drug product discussed in this notice. The agency advises that any drug product intended for OTC use for relief of dentinal hypersensitivity and prevention of dental caries that contains 5 percent potassium nitrate and any proposed single Category I anticaries ingredient may be marketed pending issuance of the final monographs for these drug classes, subject to the risk that the agency may, in either final monograph, adopt a different position that could require relabeling, recall, or other regulatory action. Marketing of such products with labeling not in accord with the labeling in the amended tentative final monograph for OTC oral health care drug products, and as further revised above, or the tentative final and amended tentative final monographs for OTC anticaries drug products may also result in regulatory action against the product, the marketer, or both. The final monograph for OTC anticaries drug products, when published, will establish the Category I anticaries ingredients for use in such combination products. That final monograph and the final monograph for OTC oral health care drug products will establish the final labeling requirements for such combination products.

Interested persons may submit written comments to the Dockets Management Branch (address above). Such comments will be considered in determining whether further amendments or revisions to this policy are warranted. Three copies of all comments shall be submitted, except that individuals may submit single copies. Comments are to be identified with the docket number found in brackets in the heading of this doucment. Received comments may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 4, 1992.

Michael R. Taylor

Deputy Commissioner for Policy.

[FR Doc 92–10910 Filed 5–8–92; 8:45 am]

BILLING CODE 4160–01–M

Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently at 56 FR 47098, September 17, 1991) is amended to reflect the transfer of functions within the Office of Regulatory Affairs (ORA), Office of Operations, Food and Drug Administration (FDA). To enable ORA to better fulfill its mission, taking into account current and emerging issues that will have an impact on the Agency, a realignment of the ORA substructure is proposed.

Specifically, the training functions for State employees will be transferred from the Office of Regional Operations (ORO) to the Office of Regulatory Resource Management (ORRM) and consolidated with training and career development functions for FDA employes. ORRM will be retitled as the Office of Resource Management. In addition, the medical products quality assurance functions will be transferred from ORO to the Office of Enforcement.

1. Delete subparagraph (f–1) Office of Regulatory Resource Mangement (HFA4A) in its entirety and insert a new subparagraph (f–1) reading as follows:

(f–1) Office of Resource Management (HFA4A). Serves as the Agency lead office, in cooperation with the Office of Health Affairs, in initiating, coordinating, and offering specific reglatory bilateral agreements and memoranda of understanding (MOU's) to foreign countries.

Provides policy direction to other Agency components in the initiation, development, and recommendation of specific domestic regulatory bilateral agreements (MOU's) with other governments.

Provides technical input for the Office of Regulatory Affairs quality assurance program as it pertains to assuring the consistency and adequacy of field investigational and inspectional operations.

Develops proposed overall field manpower allocations and long- and short-range operational program plans; identifies management data requirements for information systems; analyzes and evaluates field performance data and overall accomplishments.

Advises the Associate Commissioner and the Regional Food and Drug Directors on all areas of management, including financial management, management analysis, and administrative operations.

Designs, develops, and manages the equal employment opportunity program and a comprehensive career development and training program for Office of Regulatory Affairs Headquarters and field employees and State employees.

Develops and implements nationwide information storage and retrieval systems for data originating in the field offices.

2. Delete subparagaph (f–2) Office of Enforcement (HFA4B) in its entirety and

insert a new subparagraph (f–2) reading as follows:

(f–2) *Office of Enforcement (HFA4B).* Advises and assists the Associate Commissioner and other key officials on regulations and compliance matters that have an impact on policy development, implementation, and long-range program Coordinates, interprets, and evaluates the Agency's overall compliance efforts; as necessary, establishes compliance policy and recommends policy to the Associate Commissioner.

Stimulates an awareness within the Agency of the need for prompt and positive action to assure compliance by regulated industries; works to assure an effective and uniform balance between regulatory compliance and Agency responsiveness to consumer needs.

Acts as liaison with other Federal agencies on Agency compliance matters.

Evaluates and coordinates proposed legal actions to ascertain compliance with regulatory policy and enforcement objectives.

Directs and coordinates with the Office of Regional Operations (ORO), other Agency components, and Office of the General Counsel, new or novel cases which may be precedent-setting.

Resolves appeals when proposed compliance actions are disapproved by the centers or the Office of the General Counsel.

Coordinates development of the Agencywide bioresearch monitoring activities; monitors compliance activities to assure uniform application of compliance policy.

Serves as the Agency focal point for activities relating to the Federal Medical Products Quality Assurance Program and maintains liaison with other Government agencies procuring medical supplies; issues final administrative approval for quality assurance of specific products/firms.

3. Delete subparagraph (f–3) Office of Regional Operations (HFA4C) in its entirety and insert a new subparagraph (f–3) reading as follows:

(f–3) *Office of Regional Operations (HFA4C).* Coordinates and manages all Agency field operations, except certain criminal investigations, on behalf of the Associate Commissioner; develops, issues, approves, or clears proposals and instructions affecting field activities; serves as the central point within the Agency through which Headquarters offices obtain field support services.

Establish field compliance and enforcement posture, based on Agency policy.

Develops and/or recommends to the Associate Commissioner policy, programs, and plans for activities between the Agency and State and local agencies; administers the Agency's overall Federal-State program and policy; coordinates the program aspects of FDA contracts with State and local counterpart agencies.

Coordinates field consumer affairs and information programs; distributes timely information to the field; coordinates activities with Agency counterpart organizations.

Coordinates nationwide health fraud activities between the field, States, and Headquarters organizations.

Evaluates the overall management and capabilities of the Agency's field organization; initiates action to improve the management of field activities.

Serves as the Agency focal point in developing and maintaining international regulatory policy and activities to assure the safety, efficacy, and wholesomeness of various imported products. Coordinates Agency procedures with Headquarters and field offices and is the primary contact with U.S. Customs Service and other Federal agencies responsible for regulating imported products and assuring consistent programs among those offices.

Develops and/or recommends to the Associate Commissioner policy, program, and plans for applied research that relate to Agency enforcement problems and that will be conducted by field installations; coordinates such research efforts with appropriate Agency components.

Directs and coordinates the Agency emergency preparedness and civil defense programs.

Provides other Agency components with laboratory support in various highly specialized areas.

Recommends priorities for all field construction, repair, improvement, and renovation and recommends short-and long-range field facility utilization plans.

Dated: March 30, 1992.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 92–10879 Filed 5–8–92; 8:45 am]

BILLING CODE 4160–1–M

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines Request for Nominations for Voting Members

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill three vacancies on the Advisory Commission on Childhood Vaccines (ACCV). The commission was established by title XXI of the Public Health Service Act, as enacted by Public Law 99–660 and as subsequently amended, and advises the Secretary, HHS, on issues related to implementation of the National Vaccine Injury Compensation Program.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Barry, Principal Staff Liaison, Policy and Commission Branch, Division of Vaccine Injury Compensation at (301) 443–6593.

DATES: Nominations are to be submitted by (insert date one month from date of publication of this notice in the **Federal Register**).

ADDRESSES: All nominations are to be submitted to the Director, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration (HRSA), suite 702, 6001 Montrose Road, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION: Under the authorities that established the Advisory Commission, viz., the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463) and section 2119 of the Public Health Service Act, 42 U.S.C. 300aa–19, as added by Public Law 99–660 and amended, HRSA is requesting nominations for three voting members of the Commission.

The Commission advises the Secretary on the implementation of the National Vaccine Injury Compensation Program; on its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table; advises the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions; surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b), and advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines' and recommends to the Director, National Vaccine Program, Office of the Assistant Secretary for Health, research related to vaccine injuries which should be conducted to carry out the National Vaccine Injury Compensation Program.

The Commission consists of nine members appointed by the Secretary as follows: Three health professionals, of whom two are pediatricians, who are not employees of the United States, and who have expertise in the health care of children, the epidemiology, etiology, and prevention of childhood diseases, and the adverse reactions associated with vaccines; three members from the general public, of whom two are legal representatives of children who have suffered a vaccine-related injury or death; and three attorneys, of whom at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death and one shall be an attorney whose specialty includes representation of vaccine manufacturers. In addition, the Director of the National Institutes of Health, the Assistant Secretary for Health, the Director of the Centers for Disease Control, and the Commissioner of Food and Drugs (or the designees of such officials), serve as non-voting ex officio members.

Specifically, HRSA is requesting nominations for three voting members of the Commission representing (1) a health professional with special experience in childhood diseases; (2) a member from the general public who is a legal representative of a child who has suffered a vaccine-related injury or death; and (3) an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death. Nominees will be invited to serve 3-year terms beginning January 1, 1993, and ending December 31, 1995.

Interested persons may nominate one or more qualified persons for membership on the Advisory Commission. Nominations shall state that the nominee is willing to serve as a member of the Commission and appears to have no conflict of interest that would preclude Commission membership. Potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest. A curriculum vitae should be submitted with the nomination.

The Department has special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory bodies and therefore extends particular encouragement to nominations for appropriately qualified female, minority, or physically handicapped candidates.

Dated: May 5, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92-10911 Filed 5-8-92; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

Advisory Committee to Director; Meeting

Notice is hereby given that the National Task Force on the National Institutes of Health (NIH) Strategic Plan, an ad hoc group of consultants to the Advisory Committee to the Director, NIH, will meet in public session at the Ramada Renaissance Hotel, Washington/Dulles International Airport, Sully Road (Rt. 28) at McLearen Road, 13869 Park Center Road, Herndon, Virginia 22071, on June 23-25, 1992. The meeting will be constructed to begin with an opening plenary session at 6:30 p.m. on June 23, to be followed by science and policy panel sessions, meeting concurrently, and ending with a closing plenary session on June 25 at 1:30 p.m.

The purpose of this meeting is to review and discuss suggestions made by the biomedical research community during the five public meetings recently held relative to developing an NIH Strategic Plan. Individual Task Force consultants will meet concurrently in two panel groupings, addressing areas of science in one group and strategic policy issues in the other. The seven science panels consist of molecular medicine, structural biology, biotechnology, vaccine and immunological research, basic research, clinical research, and population-based studies; the four strategic policy issue panels are: peer review, cost management, training and infrastructure, and scientific code of ethics. The Task Force consultants will report their views to the Advisory Committee to the Director, NIH, and it is expected a draft NIH Strategic Plan will result.

If you plan to attend the meeting as an observer or if you wish additional information, please contact Ms. Mary Demory, National Institutes of Health, Shannon Building, room 218, 9000 Rockville Pike, Bethesda, Maryland 20892, (301) 496-1454, by June 18.

Dated May 4, 1992.

Bernadine Healy,

Director, NIH.

[FR Doc. 92-10888 Filed 5-8-92; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given to amend the Notice of the Division of Cancer Etiology Board of Scientific Counselors meeting scheduled for May 14-15, 1992 which was published in the **Federal Register** (57-FR-11330) on April 2, 1992.

The meeting was to have convened in Wilson Hall, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892, but has been changed to be held at the Hyatt Regency Hotel, One Bethesda Metro Place, Bethesda, Maryland (20814).

The meeting will be open to the public on May 14 from 10:30 a.m. to adjournment and from 9 a.m. to adjournment on May 15. Attendance by the public will be limited to space available. The meeting will be closed to the public from 9 a.m. to 10 a.m. on May 14.

Dated: May 4, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-10887 Filed 5-8-92; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Environmental Health Sciences; Cancellation of Board of Scientific Counselors, NIEHS Meeting

Notice is hereby given of the cancellation of the meeting of the Board of Scientific Counselors, NIEHS, May 11-12, in Building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina.

The meeting was canceled due to complications of other commitments of several members of the Board. The next meeting of the Board will be scheduled in the fall.

Dated: May 1, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-10886 Filed 5-8-92; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 92-3429; FR-3262-N-01]

Office of the Assistant Secretary for Community Planning and Development; Fiscal Year 1992 CDBG Assistance for United States-Mexico Border Region

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of fiscal year (FY) 1992 set-aside for colonias for the states of Texas, New Mexico, Arizona, and California.

SUMMARY: In accordance with section 916 of the National Affordable Housing Act (Pub. L. 101–625, approved Nov. 28, 1990) (NAHA), this announcement notifies the public of the decision made by the Department of the required FY 1992 set-aside percentages for colonias from the amount allocated for the State under section 106(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 5306(d)) in the states of Texas, New Mexico, Arizona, and California. The set-aside percentages from the FY 1992 state allocations for each of the four states is as follows: Texas, 10 percent; New Mexico, 10 percent; California, 2 percent; Arizona, none.

DATES: Effective date: May 11, 1992.

FOR FURTHER INFORMATION CONTACT: Maria S. Ortiz, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410, telephone (202) 708–1322. The TDD number for the hearing impaired is (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 916 of NAHA, CDBG Assistance for United States—Mexico Border Region, requires the states of Texas, New Mexico, Arizona, and California to set aside 10 percent of their FY 1991 State CDBG allocation for communities known as colonias. The section further requires a set-aside for FY 1992 and FY 1993. For these years, however, the Department is to determine the appropriate percentage, not to exceed 10 percent, for each of the four states after consultation with representatives of the interests of the residents of colonias.

The purpose of the set-aside is to make State CDBG funds available for activities designed to meet the needs of the residents of colonias relating to water, sewage, and housing. Only those colonias located within 150 miles of the border between the United States and Mexico and not in metropolitan statistical areas having a population in excess of 1,000,000 are eligible for assistance under section 916. Section 916(b) (1) and (2), Eligible Activities, sets forth the activities under which assistance can be distributed under this section.

The percentages determined by the Department as appropriate for FY 1992 for the states of Texas, New Mexico, Arizona, and California are based on the basic purpose of the statutory provision, consideration of the number of colonia communities within each state, the number of grant applications submitted on behalf of these communities during the states' FY 1991 CDBG competitions, the number of grants funded from the states' FY 1991 CDBG allocation, and the potential for additional accomplishments.

In keeping with the requirements of section 916(a)(2) and as part of the determination process, the Department consulted with officials of the four states and with the following representatives of the interests of the residents of colonias: the Coalition for Low-income Community Development, Council La Raza, Housing Assistance Council Inc., and the McAuley Institute.

The State of Texas reports that it has 70 counties within the 150 miles designated United States-Mexico border region. However, the state received only seven applications from counties having eligible colonias within their jurisdictions. The total request for funds was $2,391,146 out of the 5,432,800 available under the state's FY 1991 colonia set-aside. The demand for funds was limited because most communities were unable to provide the initial financing of project costs. The eligible activities restriction imposed by section 916(b)(1) and (2), which only permits planning and the payment of assessments for public improvements, did not allow for a greater use of available funds. Texas, having met the statutory requirements of section 916, is planning to hold another competition to obtain additional applications for colonia projects. Eligible activities will be limited to water and sewer, but the restriction on payment of assessments will be eliminated. The State believes that the intent of the law will be served by assuring that the remaining colonia set-aside is made available to these communities.

According to the Government Accounting Office (GAO) report, Rural Development—Problems and Progress of Colonia Subdivisions Near Mexico Border, dated November 1990, the State of Texas has over 842 unincorporated subdivisions known as colonias lacking adequate sewage facilities, potable water, and having substandard housing conditions. In view of the substantial number of colonia communities that exist in the state and the discussion contained above, it is appropriate to require the State of Texas to set aside 10 percent of its FY 1992 State CDBG allocation for colonias.

The GAO report indicates that the State of New Mexico has 15 colonias. The state received and funded $725,044 in grant applications from its FY 1991 colonia set-aside of $905,600. Based on the demand for funds (80 percent of the FY 1991 set-aside for colonias), the Department finds it appropriate to require the State of New Mexico to set aside 10 percent of its FY 1992 State CDBG allocation for colonias.

The State of California originally reported it had no colonia communities as defined under section 916. The Department requested that the State conduct comprehensive outreach efforts to identify areas which might qualify as colonias. The State's efforts resulted in three communities being designated as colonias. The State is awarding approximately $160,000 from it's FY 1991 colonia set-aside of $2,382,700 in planning grants to these communities. To allow the communities the opportunity to carry out public improvement projects as a result of the planning grants, the Department finds it appropriate to require the State of California to set aside two percent ($513,000) of its FY 1992 State CDBG allocation for colonias.

The State of Arizona asserts that it has no colonias within the definition of section 916, and submitted evidence and survey documentation supporting this assertion. Based on this information, the Department agrees, and has determined that no set-aside for colonias will be required by the State of Arizona for FY 1992. Since section 916(e)(1)(e) provides that a colonia must have been "in existence and generally recognized as a colonia" before the date of enactment of NAHA (November 28, 1990), no newly recognized colonia can be designated for funding under the FY 1992 colonia set-aside.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW, Washington, DC 20410.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612. Federalism, has determined that any implications of Federalism in the policies contained in this Notice are the result of a statutory requirement in section 916 of the NAHA. As a result, the policy is not subject to review under the Order.

The General Counsel, as the Designated Official under Executive

Order 12606, The Family, has determined that this rule may have a significant impact on formation, maintenance, and general well-being of families residing in colonias in the affected States. However, since this impact is beneficial and clearly the intent of section 916 of the NAHA, no review under the Order is required.

Dated: April 30, 1992.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 92-10996 Filed 5-8-92; 8:45 am]

BILLING CODE 4210-29-M

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-92-3247; FR-3045-N-02]

Announcement of Funding Section 8 Assistance Under the Loan Management Set-Aside (LMSA) Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of the funding decisions made by the Department as a result of competitions for Fiscal Year 1991 funding under the Notice of Fund Availability for the Loan Management Set-Aside Program.

DATES: May 11, 1992.

FOR FURTHER INFORMATION CONTACT: William Schick, Chief, Program Support Branch, Office of Multifamily Housing Management, Department of Housing and Urban Development, room 6164, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708-2654. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Loan Management Set-Aside (LMSA) Program provides special allocations of Housing Assistance Payments under section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f. The primary purpose of the LMSA program is to reduce claims on the Department's insurance fund by aiding those FHA-insured or Secretary-held projects with immediately or potentially serious financial difficulties.

On June 10, 1991, at 56 FR 26732, the Department published a Notice of Fund Availability (NOFA) announcing the availability of $240.6 million from Fiscal Year 1991 section 8 LMSA program funds for purposes of avoiding claims on the Department's insurance fund. This Notice announces the awards of section 8 funds as a result of that NOFA.

Awards were made through a competitive selection process based on the Fiscal Year 1991 Annual Needs Survey submitted by HUD Field Offices. Of the $240.6 million announced, $194 million was awarded to fund 8,558 LMSA units for five-year terms. The remainder was held aside to accommodate emergency funding requests made by housing owners, recommended by Field Office officials, and needed to prevent project mortgage defaults and claims on the insurance fund.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards, as set out at the end of this Notice.

Dated: April 28, 1992

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

BILLING CODE 4210-27-M

HUD OFFICE	PROJECT NUMBER	PROJECT NAME	OWNER	CITY	ST	ZIP	UNITS	BUDGET AUTHORITY
BOSTON	02344016	PATTON APARTMENTS	PATTON APTS ASSOC	MERIDEN	CT	06450	10	267,900
	02344023	ADAMS HOUSING	LANDOVER ASSOC	ADAMS	MA	01220	11	279,720
	02344091	LEYDEN WOODS	NAT CORP FOR HSG PARTNERSHIP	WASHINGTON	DC	20005	22	584,940
	02344145	CITY VUE I	CARABETTA ENTPRISES, INC	MERIDEN	CT	06450	61	1,117,680
	02344159	BRADFORD ARMS	BRADFORD ARMS ASSOC	PITTSFIELD	MA	01201	27	436,860
	02344160	CONCORD APARTMENTS	SPRINGFIELD INVESTORS III	MERIDEN	CT	06450	68	1,201,920
	02344184	WALNUT STREET APTS	WALNUT ST ASSOC	SPRINGFIELD	MA	01109	14	594,960
	02344186	ORANGE APARTMENTS	ORANGE APT ASSOC	MERIDEN	CT	06450	11	316,800
	02344200	CITY VUE II	CARABETTA ENTPRISES, INC	MERIDEN	CT	06450	42	795,720
HARTFORD	01735113	BILLINGS FORGE	BILLINGS FORGE	ROCKY HILL	CT	06067	9	378,360
	01744002	IMMANUEL HOUSE	IMMANUAL CHURCH HSG CORP	HARTFORD	CT	06105	40	887,100
MANCHESTER	02235011	MAPLE KNOLL APTS	MAPLE KNOLL ASSOC	LEWISTON	ME	04243	9	254,040
	02444010	RUTLAND MANOR	RUTLAND MANOR ASSOC	DOVER	NH	03820	25	621,780
	02444023	FARMINGTON APTS	FARMINGTON APTS	DOVER	NH	03820	2	48,240
	02444035	CLAREMONT MANOR	CLAREMONT MANOR APTS, LTD	LOS ANGELES	CA	90067	47	1,500,840
PROVIDENCE	01644032	DEVELCO FAMILY APTS	DEVELCO FAMILY APTS	BLACKSTONE	MA	01504	19	436,620
	01644072	FESTIVAL FIELD APTS	FIELD ASSOCIATES	RESTON	VA	22090	77	1,921,920
	01644080	CHARLESGATE NORTH	CHARLESGATE NORTH	PROVIDENCE	RI	02904	25	635,400
	01655003	WIGGINS VILLAGE	PROVIDENCE BUILDING SANITARY	CRANSTON	RI	02907	147	3,457,440
NEWARK	03144016	98 CLINTON AVENUE	WALTER COHN	NEWARK	NJ	07079	13	344,760
	03144017	320 S. ORANGE AVENUE	WALTER COHN	SOUTH ORANGE	NJ	07103	18	545,460
	03155014	ELIZABETH CENTER APTS	ELIZABETH CENTER APTS URBAN	ELIZABETH	NJ	07202	107	2,956,500
	031SH012	TRENT CENTER APTS	TRENT CENTER APT INC	TRENTON	NJ	08609	159	3,805,680
	031SH017	WESLEY TOWERS	REV. VIRGIL MABRY	NEWARK	NJ	07104	81	1,441,680
	03511008	BEACON PLACE	SHERRIE MEHTA	CAMDEN	NJ	08104	64	1,023,120
	03536606	REGENCY PARK APTS	REGENCY HOUSING PARTNERS	VIRGINIA BEACH	VA	23451	60	2,043,000
NEW YORK	01244004	MESSIAH RIVERVIEW	WESTCHESTER ASSOCIATES	ST. LOUIS	MO	63119	76	2,343,660
BALTIMORE	05235401	VILLA RIDGE	WHETSTONE COMPANY	GAITHERSBURG	MD	20877	207	6,105,720
	05235419	RIEMAN BLOCK	RIEMAN BLOCK LTD	OWINGS MILLS	MD	21117	27	1,081,800
	05244055	MADISON PARK	MADISON PARK NORTH APTS LTD	LOS ANGELES	CA	90067	84	2,562,540
	05244071	CLAY COURT APTS	CLAY COURT ASSOC LTD	JESSUP	MD	20794	48	1,493,700
	05244107	EDGEWATER VILLAGE	HERBERT ROTHENBERG	ATLANTIC CITY	NJ	08401	87	2,466,660
	05244200	ORCHARD MEWS	ORCHARD MEWS ASSOCIATES	RESTON	VA	22090	46	1,622,040
CHARLESTON	04544002	SPRING HILL APTS	CITY PARK ASSOCIATES	ROCKVILLE	MD	20852	35	852,840
PITTSBURGH	03335157	BELMONT HEIGHTS	BELMONT HEIGHTS ASSOCIATES	JOHNSTOWN	PA	15907	28	541,620
	03335193	JUST-INN TRANSITION	JUST-INN TRANSITION, INC	PITTSBURGH	PA	15211	7	262,080
	03344002	PENN CIRCLE TOWERS	PENN CIRCLE DEVELOPMENT CO	PITTSBURGH	PA	15206	26	639,000
	03344007	EAST MALL	EAST MALL ASSOCIATES	PITTSBURGH	PA	15206	30	663,480
	03344048	CRESTVIEW GARDENS	CASCO ASSOCIATES, LTD	PITTSBURGH	PA	15206	22	357,480
	03344054	HARRIS GARDENS	HARRIS GARDENS, LTD	WASHINGTON	DC	20005	29	545,520
	03344057	BRINTON MANOR	BRINTON MANOR NO. 1 ASSOC	WASHINGTON	DC	20005	30	734,580
	03344079	SHENANGO PARK	SHENANGO PARK ASSOCIATES	PITTSBURGH	PA	15222	11	213,240
	03344082	LINDEN GROVE APTS	EAST PITTSBURGH ASSOC	PITTSBURGH	PA	15222	13	210,600
	03344090	CHURCHVIEW GARDENS	CHURCHVIEW GARDENS LTD	WASHINGTON	DC	20005	16	343,560
	03344169	BRIGHTWOOD MANOR	BRIGHTWOOD MANOR ASSOCIATES	WASHINGTON	DC	20005	7	237,720

	03344174 ROOSEVELT ARMS	ROOSEVELT ARMS ASSOCIATES	McMURRAY	PA	15317	20	338,400
	03344175 MIDTOWN PLAZA	MIDTOWN PLAZA ASSOCIATES	McMURRAY	PA	15660	24	641,460
	03344801 CONRAD HOUSE	CONRAD HOUSE INC	ERIE	PA	16511	8	109,440
	03344803 LAMBETH APARTMENTS	EPISCOPAL RESIDENCES, INC	PITTSBURGH	PA	15224	25	309,000
	03355002 EAST HILLS PARK	EAS HILLS PARK APARTMENTS	PITTSBURGH	PA	15221	8	215,520
	033SH014 RIVERVIEW I	RIVERVIEW APARTMENTS, INC	PITTSBURGH	PA	15217	32	591,360
RICHMOND	05144020 CHESAPEAKE TOWN I	CHESAPEAKE TOWNHOUSES INC	CHESAPEAKE	VA	23323	18	530,100
	05144021 CHESAPEAKE TOWN II	CHESAPEAKE TOWNHOUSES INC	CHESAPEAKE	VA	23323	24	707,040
	05144025 RANDOLPH COURT	HOPE VILLAGE LTD	PAC PALISADES	CA	90272	30	699,780
	05144043 DARBYTOWN MANOR	DARBYTOWN DEVELOPMENT ASSOC	RESTON	VA	22090	139	3,354,840
	05144047 FERNCLIFF APARTMENTS	FERNCLIFF APTS	WASHINGTON	DC	20005	45	918,300
	05144057 NORTH HILLS APTS	WILLIAM M. MOE, GP	NEW YORK	NY	10018	22	358,200
	05144100 LANGLEY I	LANGLEY SQUARE ASSOC	BETHESDA	MD	20814	25	732,600
	05144154 CHURCHLAND NORTH	PHILIP D. HIGHTOWER, GP	NORFOLK	VA	23510	80	1,680,600
	05144160 CHESAPEAKE TOWN III	CHESAPEAKE TOWNHOUSES INC	CHESAPEAKE	VA	23323	35	1,030,380
	05144190 LANGLEY II	LANGLEY SQUARE ASSOC	BETHESDA	MD	20814	30	817,200
	05144209 HALCUN MANOR	HORACE G. FRALEN, GP	ROANOKE	VA	24018	60	1,314,000
	05144216 WILLOW WOODS	WILLOW WOODS APTS	ROANOKE	VA	24018	35	697,800
ATLANTA	06144056 BROWNLEE COURT	MS. MILDRED L. KINGLOFF	ATLANTA	GA	30303	15	322,380
	06144169 GREATER MT. CALVARY	NATIONAL HOUSING PARTNERSHIP	WASHINGTON	DC	20005	19	445,260
	06144197 BLAKEWOOD APARTMENTS	BLAKEWOOD APARTMENT ASSOC	GREENVILLE	SC	29602	6	83,040
	06144290 CAPITOL VANIRA	CAPITOL VANIRA ASSOCIATES	ATLANTA	GA	30313	21	614,820
	06144291 BOYNTON VILLAGE	BOYNTON VILLAGE ASSOCIATES	ATLANTA	GA	30313	15	474,660
	06155043 ANTHONY ARMS APARTMENTS	EDWARD D. HERRICK	WATERBURY CTR	VT	05677	10	200,280
	06194043 ESQUIRE VILLAGE	MR. ASBURY D. SNOW, JR	ATLANTA	GA	30328	25	555,900
	061SH005 CAMPBELL-STONE	CAMPBELL-STONE APTS, INC	ATLANTA	GA	30305	27	504,840
	061SH009 CAMPBELL-STONE	CAMPBELL-STONE APTS, INC	ATLANTA	GA	30305	10	224,400
BIRMINGHAM	06244013 MIDWAY GARDENS	JOHN MOORE	BIRMINGHAM	AL	35255	50	982,800
	06244048 TIMBER RIDGE	GARY MARCRUM	BIRMINGHAM	AL	35205	21	432,660
	06244057 VILLAGE GREEN	VILLAGE GREEN APTS LTD	WASHINGTON	DC	20005	39	825,000
	06244068 COURTVIEW TOWERS	COURTVIEW TOWERS	CHARLESTON	SC	29402	17	362,100
COLUMBIA	05444019 CRESTVIEW VILLA	CRESTVIEW HOUSING LP	SANTA MONICA	CA	90404	13	217,260
	05444801 CHRISTOPHER TOWERS	THE NAVIGATOR CORPORATION	COLUMBIA	SC	29201	22	339,300
GREENSBORO	05311020 MELVID COURT APTS	MELVID COURT ASSOCIATES	RALEIGH	NC	27619	12	418,320
	05335479 DOVE MEADOWS	DOVE MEADOWS, A NJ GEN PT	RAMSEY	NJ	07446	212	4,921,200
	05344018 OAKWOOD AVENUE I	THETFORD PROPERTIES III, LP	RICHMOND	VA	23201	13	255,480
	05344032 IN-CHU-CO APARTMENTS	INTERCHURCH COUNCIL HSG CORP	CHAPEL HILL	NC	27599	37	651,060
	05344038 CAMELOT APARTMENTS	CAMELOT HOUSING	ALEXANDRIA	VA	22304	25	545,700
	05344056 FAIRCHILD HILLS	FAIRCHILD HILLS APTS	WINSTON-SALEM	NC	27101	66	1,148,520
	05344059 CHEEK ROAD APTS	CHEEK ROAD LTD PARTN	WASHINGTON	DC	20005	50	1,152,540
	05344067 BEASLEY ARMS	B A LIMITED	DANVILLE	VA	24543	20	416,520
	05344081 OAKWOOD AVENUE II	THETFORD PROPERTIES IV	RICHMOND	VA	23201	18	382,080
	05344084 FIRST FARMINGTON	FIRST FARMINGTON	GREENSBORO	NC	27415	17	310,380
	05344101 OAK KNOLL APARTMENTS	OAK KNOLL LIMITED	RALEIGH	NC	27619	50	966,060
	05344161 ORCHARD PARK	CP/CB HOUSING PARTNERS XIII	LOS ANGELES	CA	90067	20	414,045
	05344202 HOLLY OAK PARK	HURBELL I	WASHINGTON	DC	20005	21	416,280
	05344212 CLANCY HILLS APTS	CLANCY HILLS	WINSTON-SALEM	NC	27114	19	390,660
	05344237 GREENHAVEN TOWNHOUSE	GREENHAVEN TOWNHOUSES	MEMPHIS	TN	38119	20	424,800
	05344257 NEWGATE GARDENS	NEWGATE	GREENSBORO	NC	27415	51	1,031,280
	05344801 VANDERBILT APTS	VANDERBILT APTS, INC	ASHEVILLE	NC	28801	51	474,300

JACKSONVILLE	06344003	HAROLD HOUSE APTS	NATIONAL HOUSING PARTNERSHIP	WASHINGTON	DC	20005	8	261,600
	06344007	CATHEDRAL TERRACE	CATHEDRAL FOUNDATION	JACKSONVILLE	FL	32202	59	1,168,200
	06344008	FANNY TAYLOR HOME	FANNIE E. TAYLOR HOME	JACKSONVILLE	FL	32207	35	657,300
	06344010	CAROLINE ARMS APTS	CAROLINE ARMS, LTD	MAITLAND	FL	32751	20	579,480
	06344011	SILVER CREEK APTS	SILVER CREEK APTS, LTD	JACKSONVILLE	FL	32216	26	706,980
	06344012	CARAVAN APARTMENTS	CARAVAN APTS, LTD	JACKSONVILLE	FL	32205	56	1,370,340
	06344018	GLEN SPRINGS MANOR	BATES REALTIES	QUINCY	FL	32351	62	1,568,040
	06344022	MAGNOLIA TERRACE APTS	MAGNOLIA TERRACE, LTD	TALLAHASSEE	FL	32301	9	304,740
	06344034	SPRING MANOR	ROYAL AMERICAN HOUSING, LTD	PANAMA CITY	FL	32405	11	233,700
	06344060	CASA DEL MAR APTS	CASA DEL MAR APARTMENTS, LTD	PANAMA CITY	FL	32405	8	190,080
	063SH017	CATHEDRAL TOWERS	CATHEDRAL FOUNDATION	JACKSONVILLE	FL	32202	43	758,280
	063SH033	CATHEDRAL TOWNHOUSE	CATHEDRAL FOUNDATION	JACKSONVILLE	FL	32202	47	864,720
	06644013	THE BIRCHES APTS	THE BIRCHES ASSOCIATES, LTD	GAINESVILLE	FL	32608	20	625,440
	06644057	ROYAL MANOR	ROYAL MANOR LIMITED	SYRACUSE	NY	13209	25	510,660
	06644072	STONYBROOK APTS	STONYBROOK APTS ASSOCIATES	GREENVILLE	SC	29606	96	2,413,440
	06735277	ARMENIA GARDENS	PINECREST VILLAGE ASSOCIATES	INDIANAPOLIS	IN	46241	42	1,274,040
	06744033	PALM GROVE APTS	PALM GROVE GARDEN APTS, LTD	GLEN COVE	NY	11542	59	1,667,100
	06744066	OAKHURST SQUARE I	NEW OAKHURST SQ APTS ASSOC	MEMPHIS	TN	38103	12	267,900
	06744142	OAKHURST SQUARE II	NEW OAKHURST SQ. II	MEMPHIS	TN	38103	11	257,160
	06744148	SAND LAKE VILLAS	SAND LAKE HOUSING, LTD	SANTA MONICA	CA	90404	45	1,129,500
	06755011	DAYTONA VILLAGE	DAYTONA VILLAGE APT., 2	DAYTONA BEACH	FL	32018	17	387,060
LOUISVILLE	08311003	HALLMARK PLAZA	HALLMARK PLAZE APTS	LOUISVILLE	KY	40220	20	349,200
	08335415	O'CONNOR SQUARE	O'CONNER SQUARE APTS, INC	LOUISVILLE	KY	40251	11	196,020
	08344038	PINE CREST I	MS. DEE HAHN	LEXINGTON	KY	40533	4	51,000
	08344081	BELMONT COURT	633 BELMONT ST. ASSOC, LTD	NASHVILLE	TN	37206	13	219,180
	08344109	UNION HEIGHTS	FRANK C. DAVIS, JR	NASHVILLE	TN	37216	8	118,800
	08344111	MULBERRY COURT	FRANK C. DAVIS, JR	NASHVILLE	TN	37216	7	82,320
	08344802	CHAPEL HOUSE	CHRISTIAN CHURCH HOMES	LOUISVILLE	KY	40243	30	540,000
	08344804	HILLEBRAND HOUSE	UNION LABOR HOUSING INC	LOUISVILLE	KY	40203	10	128,580
NASHVILLE	08144029	RIDGECREST	RIDGECREST APARTMENTS	MEMPHIS	TN	38117	39	797,640
	08635090	GREENBRIER	SAM YOUNG	MADISON	TN	37115	16	457,200
	08644001	HOWE GARDENS	ROBERT A. KEENAN	FRANKLIN	TN	37064	35	663,600
	08655018	WINSTEAD MANOR	ROBERT A. KEENAN	FRANKLIN	TN	37064	14	228,360
CHICAGO	07144042	DEKALB PLAZA	DECAL PROPERTIES ASSOC	MADISON	WI	53705	20	344,400
	07144051	CAMBRIDGE MANOR	DANIEL LEVIN, GP	CHICAGO	IL	60606	60	1,358,400
	07144101	SWIFTON COMMONS	ROGER GERLACH	FOND DU LAC	WI	54934	70	1,920,120
	07155021	CARMINE MARINE	HERB KOLLINGER	CHICAGO	IL	60640	10	194,400
	07155190	ROLLING GREEN APTS	WILLIAM DEBRULER	LIBERTYVILLE	IL	60648	58	1,628,400
	071SH007	DREXEL SQUARE APTS	CHICAGO DWELLINGS ASSOC	CHICAGO	IL	60601	103	2,350,380
CLEVELAND	04235285	WILLIAMSBURG APTS	WILLIAMSBURG APTS. OF TOLEDO	TOLEDO	OH	43614	15	468,900
	04244108	SHAMROCK PLACE	SHAMROCK PLACE	PAINESVILLE	OH	44077	10	188,940
DETROIT	04435468	TOWN APARTMENTS	STEPHEN HAYMAN	SOUTHFIELD	MI	48034	55	1,263,900
	04444801	DUNN FAMILY	DUNN FAMILY SENIOR CITIZEN	CENTERLINE	MI	48015	32	720,240
	044SH004	ROCHDALE COURT	FERNDALE COOPERATIVE	DETROIT	MI	48226	55	1,206,420
	044SH012	FOUR FREEDOMS	FOUR FREEDOMS OF DETROIT	MIAMI BEACH	FL	33139	106	2,374,680
	04835047	BOULDER CREEK	P.M. DIVERSIFIED	BIRMINGHAM	MI	48010	40	1,006,560
GRAND RAPIDS	04735135	GREENSPIRE III	GREENSPIRE EQUITY III	PORTAGE	MI	49081	24	622,920
	04744002	CRANBROOK MANOR	CRANBROOK MANOR APTS LP	FARMINGTON HL	MI	48334	27	658,440
	04744016	PINEBROOK MANOR	PINEBROOK MANOR LTD	BEVERLY HILLS	CA	90211	28	741,120

	04744019	KENTWOOD (COUNTRYSIDE)	KENTWOOD APARTMENTS, INC.	TROY	MI	48084	29	714,360
	04755015	SUNNYRIDGE TOWNHOUSE	SUNNYRIDGE LTD	FARMINGTON HL	MI	48334	23	556,140
INDIANAPOLIS	07335201	EMERALD GREEN II	EMERALD GREEN ASSOCIATES	INDIANAPOLIS	IN	46290	20	533,520
	07344073	WASHINGTON HIGHLAND	MURRAY HABOR	NEW YORK	NY	10021	12	264,000
	07358501	VINCENNES NIBLACK	MURRAY HABOR	NEW YORK	NY	10021	13	272,220
MILWAUKEE	07535305	DEL RIO APARTMENTS	DEL RIO APTS	MILWAUKEE	WI	53201	10	407,400
	07544008	UNIVERSITY VILLAGE	UNIVERSITY VILLAGE CO	EAU CLAIRE	WI	54702	64	892,800
	07544106	MEADOW VILLAGE	MEADOW VILLAGE LTD	MILWAUKEE	WI	53203	15	470,220
MINN-STPAUL	09244102	VISTA VILLAGE	RIO VISTA NON-PROFIT HOUSING	ST. PAUL	MN	55102	9	205,560
	09244207	WESTMINSTER PLACE	WESTMINSTER PLACE LTD	ST. PAUL	MN	55102	25	567,480
ALBUQUERQUE	11644024	SAN JUAN	ASSOC. FIN. A.K.A. WILSHIRE	PAC PALISADES	CA	90272	30	605,520
	11635097	FOUR SEASONS	BERRY DAVIS	COLORADO SPR	CO	80901	28	614,400
DALLAS	11244146	CHEROKEE VILLAGE	CHEROKEE II LTD	BIRMINGHAM	AL	35205	31	668,160
FT WORTH	11244206	BROOKSIDE MANOR	BROOKSIDE MANOR ASSOCIATES	BETHESDA	MD	20814	33	633,480
	11344001	VILLA SUPREME	VILLA SUPREME LTD	HOUSTON	TX	77027	66	1,228,500
	11344006	HOLLIDAY CREEK APTS	KINGS SQUARE APARTMENTS LTD	LUBBOCK	TX	79415	79	1,770,900
	11344018	TIMBERLAKE APTS	TIMBERLAKE APTS LTD	WASHINGTON	DC	20005	63	1,020,180
	11344023	MARINE APARTMENTS	MARINE HOUSING LTD	PAC PALISADES	CA	90272	22	480,960
	11344033	SUN VALLEY	SUN VALLEY APARTMENTS LTD	LUBBOCK	TX	79415	32	497,340
	13344033	PARK VILLAGE	BIG SPRIG PARK VILLAGE A. LTD	LUBBOCK	TX	79415	22	472,200
	13355006	VILLA DEL NORTE	VILLA DEL NORTE II ASSOC	SEATTLE	WA	98101	47	771,000
HOUSTON	11435217	HAVERSTOCK HILL II	HERBERT J. ZIEBEN	HOUSTON	TX	77042	185	4,792,260
LITTLE ROCK	08235066	HUNTINGTON PLACE	TESCO PROPERTIES, INC	MEMPHIS	TN	38119	40	780,000
	08244019	ALLIED GARDENS ESTATES	ALLIED GARDENS LTD	FT. SMITH	AR	72901	56	1,069,920
	08244040	BRIARWOOD APARTMENTS	BRIARWOOD APARTMENTS, LTD	WASHINGTON	DC	20005	77	1,456,500
OKLAHOMA CITY	117SH006	SUPERBIA	FOUND. FOR SEN CITIZENS INC	OKLAHOMA CITY	OK	73162	58	838,200
SAN ANTONIO	11544012	EAST PARK PLACE	LULAC EAST PARK PLACE A TRUST	SAN ANTONIO	TX	78219	172	2,642,640
	11544035	RIO MANOR	RIO MANOR, LTD	SAN ANTONIO	TX	78230	7	126,420
	11555012	GOLIAD GARDENS	GOLIAD GARDENS, LTD	SAN ANTONIO	TX	78230	42	916,020
	115SH001	GRANADA HOMES	GRANADA TRADES COUNCIL HSG	SAN ANTONIO	TX	78205	58	967,440
SHREVEPORT	05935027	BETHEL APARTMENTS	BETHEL APTS, INC	ALEXANDRIA	LA	71302	90	1,470,000
	05944007	TIMBERS APARTMENTS	TIMBERS APTS, INC	WEST MONROE	LA	71291	20	250,200
TULSA	11844023	WEST OAK VILLAGE	NATIONAL HSG PTNSHIP	WASHINGRON	DC	20005	10	228,720
	11844065	BRISTOW VILLAGE	BRISTOW VILLAGE APTS	OKMULGEE	OK	74447	11	181,260
	11844801	TULSA PYTHIAN MANOR	TULSA PYTHIAN MANOR, INC	TULSA	OK	74104	30	416,340
DES MOINES	07444004	WAHKONSA VILLAGE	WAHKONSA VILLAGE ASSOC	SIOUX FALLS	SD	57101	25	507,000
	07444055	WESTSIDE MANOR	WESTSIDE MANOR LTD	CRESTON	IA	50801	21	394,680
KANSAS CITY	08444027	LINCOLN GARDENS	LINCOLN REDEVELOPMENT	KANSAS CITY	MO	64108	42	823,380
	08444066	CENTURY 37	ROLEN ASSOCIATES	KANSAS CITY	MO	64105	23	493,740
	08444088	ROYAL TOWERS	ROYAL TOWERS LTD PTNRSHP	WASHINGTON	DC	20005	22	378,000
	08444109	BRIGHTON PLACE	ST.MICHAELS CATHOLIC CHURCH	KANSAS CITY	MO	64127	5	88,200
	08444129	SHERRI ESTATES	JOEL L. TONKIN	KANSAS CITY	MO	64111	15	295,260

	08444801	TEMPLE HEIGHTS I	KANSAS CITY BAPTIST TEMPLE	RAYTOWN	MO	64133	15	219,600
ST LOUIS	08535107	THE FARM	JOHN LUCIANI	THE WOODLANDS	TX	77380	80	1,837,200
	08535278	O'FALLON PLACE	O'FALLON IB LTD	ST LOUIS	MO	63101	10	262,800
	08535334	O'FALLON PLACE II	O'FALLON LTD.	ST LOUIS	MO	63101	20	282,600
	08535353	SAVOY COURT	SAVOY COURT ASSOC	ST LOUIS	MO	63112	10	493,800
	08535363	ST LOUIS PLACE	ST LOUIS PLACE ASSOC	ST LOUIS	MO	63101	10	312,600
	08535366	VILLE	SUMNER ASSOCIATES	ST LOUIS	MO	63102	30	801,000
	08535391	COLLEGE HILLS	W. A. THOMES	ST LOUIS	MO	63119	50	1,284,180
DENVER	09444001	COMMUNITY HOMES I	COMMUNITY HOMES, INC	FARGO	ND	58102	42	614,160
	09444007	COMMUNITY HOMES II	COMMUNITY HOMES, INC	FARGO	ND	58102	49	717,060
	09444010	COMMUNITY HMS/WHAPETON	COMMUNITY HOMES, INC	FARGO	ND	58102	48	666,240
	10144002	SAKURA SQUARE	TRI-STATE BUDDHIST CHURCH INC	DENVER	CO	80202	50	723,600
	10144018	SAN JUAN DEL CENTRO	NHP INC	IRVING	TX	75038	43	974,340
	10144051	GAO JUANITA	GAO JUANITA NOLASCO INC	DENVER	CO	80204	25	405,180
	10144114	GREELEY MANOR	RICHARD KEMME	GREELEY	CO	80631	50	709,260
	10544035	OSMOND HEIGHTS	THOMPSON-RAWSON CO	HOOPER	UT	84315	16	315,360
LOS ANGELES	12235555	DANILO GARDENS	DANILO GARDENS, LTD	SAN DIEGO	CA	92110	25	1,030,500
	12244142	B AMAR PLAZA	AMAR PLAZA COOP, INC	LA PUENTE	CA	91744	42	987,120
	12244148	VOORHIS VILLAGE	VOORHIS VILLAGE COOP, INC	SAN DIMAS	CA	91773	21	470,700
	12244452	RODEO DRIVE APARTMENTS	NCHP, GENERAL PARTNERS	WASHINGTON	DC	20005	71	1,676,700
LAS VEGAS	12535071	WALKER HOUSE	WALKER HOUSE ASSOC LTD	GREENBRAE	CA	94904	20	634,500
PHOENIX	12344007	PALO VERDE GARDENS	PALO VERDE GARDENS	PHOENIX	AZ	85014	116	2,441,520
	12344050	CASA MESA ESTATES	CASA MESA ESTATES	PHOENIX	AZ	85021	78	2,202,720
SACRAMENTO	13644130	SANTA CLARA TERRACE	SANTA CLARA TERRACE	GREENBRAE	CA	94904	18	476,280
	13644158	VERNAL APARTMENTS	VERNAL HOUSING	GREENBRAE	CA	94904	26	562,080
	13644160	COLLEGE GARDENS I	TEMPE GARDENS I	GREENBRAE	CA	94904	39	1,173,600
	13644235	AMERICAN RIVER GARDENS	AMERICAN RIVER GARDENS CO	GREENBRAE	CA	94904	31	872,040
SAN DIEGO	12944084	GRANT HEIGHTS PARK	GRANT HEIGHTS PARK, LTD	SAN DIEGO	CA	92037	23	521,040
SAN FRANCISCO	12144027	ALL HALLOWS GARDEN	ALL HALLOWS ASSOCS, LTD	OAKLAND	CA	94621	25	807,180
	12144135	MONUMENT ARMS	MONUMENT ARMS INC	FAIRFIELD	CA	94533	15	370,500
	12144246	HILARITA	HILARITA APARTMENT	TIBURON	CA	94920	9	239,340
	12144284	NIHONMACHI TERRACE	JAPANESE AMERICAN RELIGIOUS	SAN FRANCISCO	CA	94109	41	680,160
	12144365	BARRETT TERRACE	GRCD #1 & ASSOCIATES	WASINGTON	DC	20005	53	1,644,420
	12144366	BARRETT PLAZA	GRCD #2 & ASSOCIATES	WASHINGTON	DC	20005	22	738,120
	12144383	LAKEVIEW I	GRIFFITH LTD	WASHINGTON	DC	20005	60	1,519,740
	12144440	BAYVIEW APARTMENTS	BAYVIEW HUNTERS'S POINT APTS	OAKLAND	CA	94621	5	220,020
	12144801	BETH ASHER	SATELLITE SENIOR HOME INC	OAKLAND	CA	94612	9	234,360
	12144804	ROTARY PLAZA	ROTARY PLAZA INC	SAN FRANCISCO	CA	94080	20	391,920
	12144812	SATELLITE CENTRAL	SATELLITE SENIOR HOME INC	OAKLAND	CA	94612	44	1,137,840
	12144814	CASA DE REDWOOD	CASA DE REDWOOD INC	REDWOOD CITY	CA	94063	30	622,800
	12144817	OTTERBEIN	SATELLITE SENIOR HOME INC	OAKLAND	CA	94612	5	137,400
	121SH024	STRAWBERRY CREEK	STRAWBERRY CRK FOUNDATION	BERKELEY	CA	94702	54	1,270,080
	121SH041	ASCENSION ARMS	ASCENSION ARMS INC.	VALLEJO	CA	94590	30	483,600
	121SH070	NORTHGATE TERRACE	GRAPHIC COMMUNICATION UNION	OAKLAND	CA	94612	96	1,512,480

[FR Doc. 92–10931 Filed 5–8–92; 8:45 am]
BILLING CODE 4210–27–C

[Docket No. D-92-991; FR-3278-D-01]

Acting Assistant Secretary for Fair Housing and Equal Opportunity; Designations

AGENCY: Office of Fair Housing and Equal Opportunity, HUD.

ACTION: Designation.

SUMMARY: This document revises the designation of officials who may serve as Acting Assistant Secretary for Fair Housing and Equal Opportunity.

EFFECTIVE DATE: May 4, 1992.

FOR FURTHER INFORMATION CONTACT: Dianne D. Taylor, Management Analyst, Office of Fair Housing and Equal Opportunity, Administrative Support Division, room 5124, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC (202) 708-2701. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The following designation is being revised because of a reorganization in Fair Housing and Equal Opportunity.

Section A. Designation

Each of the officials listed below is designated to act as Assistant Secretary for Fair Housing and Equal Opportunity, in the case of absence or vacancy in such position. The named officials shall serve in the order set forth.

(1) General Deputy Assistant Secretary for Fair Housing and Equal Opportunity;
(2) Deputy Assistant Secretary for Operations and Management;
(3) Director, Office of Investigations;
(4) Director, Office of Affirmative Action and Equal Employment Opportunity;
(5) Director, Office of Fair Housing Assistance and Voluntary Programs;
(6) Director, Office of Program Standards and Evaluation;
(7) Director, Office of Management and Field Coordination;
(8) Director, Office of Program Training and Technical Assistance.

Section B. Authorization

Each head of an organizational unit of Fair Housing and Equal Opportunity is authorized to designate an employee under his or her jurisdiction to serve as acting head during the absence of the head of the unit. An official serving in an acting position under this section does not hold that position for purposes of the order of succession set forth in Section A.

Section C. Functions

The official serving in an acting capacity under this designation shall have all the powers, functions, and duties assigned to such position.

Section D. Supersedure

This designation supersedes the designation published on June 12, 1991 at 56 FR 27027.

Authority: Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. § 3535(d).

Dated: May 4, 1992.

Gordon H. Mansfield,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 92-10998 Filed 5-8-92; 8:45 am]

BILLING CODE 4210-28-M

Office of the Secretary

[Docket No. D-92-988; FR 3284-D-01]

Review of Determinations, Orders and Interlocutory Rulings of Hearing Officers; Designation

AGENCY: Office of The Secretary, Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: This designation grants William A. Dal Col, Chief of Staff, the power and authority of the Secretary to review determinations, orders and interlocutory rulings of hearing officers in certain proceedings of the Department of Housing and Urban Development.

EFFECTIVE DATE: April 30, 1992.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Markison, Assistant General Counsel for Administrative Law, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708-3137. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Subpart G of 24 CFR part 26 permits parties to request review of determinations, orders and interlocutory rulings by hearing officers concerning administrative sanction hearings for government debarment and suspensions pursuant to 24 CFR part 24, hearings with respect to administrative actions taken by the Mortgagee Review Board pursuant to 24 CFR part 25, hearings with respect to determinations by the multifamily Participation Review Committee pursuant to 24 CFR part 200, subpart H, as well as any other case where a hearing is required by statute or regulation, to the extent that rules pertaining to Secretarial review adopted under such statute or regulation are not inconsistent with 24 CFR part 26.

Under Subpart G of 24 CFR part 26, the Secretary may name a designee to grant or deny a petition for review of a determination or order, to grant or deny a petition for review of an uncertified interlocutory ruling, to review a certified interlocutory ruling, to require further briefs from opposing parties with respect to a petition for a review of a determination or order, to issue a written determination and to serve it upon the parties and the hearing officer, to interrupt a proceeding pending the determination and to serve it upon the parties and the hearing officer, and to interrupt a proceeding pending the determination of an interlocutory appeal.

This designation provides that William A. Dal Col, Chief of Staff, shall be the Secretary's designee with respect to Subpart G of 24 part 26 and shall have all the power and authority given to the Secretary under this Subpart.

The Secretary designated Shelly A. Longmuir as the Secretary's designee for this same function, 57 FR 9426, (March 18, 1992). This designation supersedes and revokes that designation.

Section A. Designation

William A. Dal Col, Chief of Staff, is hereby designated to exercise all power and authority of the Secretary of Housing and Urban Development under 24 CFR part 26, subpart G.

Section B. No Further Designation

The power and authority granted to William A. Dal Col, Chief of Staff, may not be redelegated or granted to another designee pursuant to this designation.

Section C. Supersession and Revocation

This designation supersedes the grant of this authority and designation of the Counselor to the Secretary to perform this function, 57 FR 9426 (March 18, 1992).

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. § 3535(d)).

Dated: April 30, 1992.

Jack Kemp,

Secretary.

[FR Doc. 92-10997 Filed 5-8-92; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. D-92-989]

Las Vegas Office, Region IX; Designation

AGENCY: Department of Housing and Urban Development.

ACTION: Designation and order of succession.

SUMMARY: The Manager of the Las Vegas Office in Region IX is designating officials who may serve as Acting

Manager during the absence, disability, or vacancy in the position of Manager.

EFFECTIVE DATE: February 18, 1992.

FOR FURTHER INFORMATION CONTACT: Beverly G. Agee, Regional Counsel, Department of Housing and Urban Development, Region IX, 450 Golden Gate Avenue, Box 36003, San Fransisco, CA 94102. Telephone (415) 556-6110. This is not a toll-free number.

Designating of Acting Manager

Each of the officals appointed to the following positions is designated to serve as Acting Manager during the absence, disability, or vacancy in the position of Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided: That no official is authorized to serve as Acting Manager unless all preceding officials in this designation are unable to act by reason of absence, disability, or vacancy in said position:

1. Deputy Manager
2. Chief, Single Family/Property Disposition Branch
3. Chief, Multifamily Loan Management Branch
4. Chief, Housing Development Branch

This designation supersedes and cancels the designation and order of succession published on December 19, 1984 (49 FR 49379).

Authority: Delegation of Authority by the Secretary of Housing and Urban Development effective October 1, 1970; 36 FR 3389, February 23, 1971.

Dated: April 15, 1992.

Andrew Robertson,

Manager, Las Vegas Office, Department of Housing and Urban Development, Region IX.

Concur:

Robert J. De Monte,

Regional Administrator—Regional Housing Commissioner, Region IX.

[FR Doc. 92-10999 Filed 5-8-92; 8:45 am]

BILLING CODE 4210-01-M

[Docket No D-92-990]

Organization, Functions, and Authority Delegations; Sacramento

AGENCY: Department of Housing and Urban Development.

ACTION: Designation and order of succession.

SUMMARY: The Manager of the Sacramento Office in Region IX is designating Officials who may serve as Acting Manager during the absence, disability or vacancy in the position of Manager.

EFFECTIVE DATE: April 1, 1992.

FOR FURTHER INFORMATION CONTACT: Beverly G. Agee, Regional Counsel, Department of Housing and Urban Development, Region IX, 450 Golden Gate Avenue, Box 36003, San Francisco, CA 94102, Telephone (415) 556-6110. This is a toll-free number.

Designation of Acting Manager

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability or vacancy in the position of Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unable to act by reason of absence, disability, or vacancy in said position:

1. Deputy Manager
2. Director, Housing Development
3. Director, Housing Management
4. Chief Attorney
5. Director, Public Housing

This designation supersedes and cancels any previous designation, published or unpublished, that may be in effect prior to the effective date of this document.

Authority: Delegation of Authority by the Secretary of Housing and Urban Development effective October 1, 1970; 36 FR 3389, February 23, 1971.

Dated: March 25, 1992.

Paul A. Pradia,

Acting Manager, Sacramento Office, Department of Housign and Urban Development, Region IX.

Concur:

Robert J. De Monte,

Regional Administrator-Regional Housing Commissioner Region IX.

[FR Doc 92-11000 Filed 5-8-92; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Results of Eighth Regular Meeting; Twenty-Fifth Meeting of the Standing Committee; Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Service announces a public meeting to discuss both the results of the eighth regular meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and agenda items to be discussed at the twenty-fifth meeting of the CITES Standing Committee.

DATES: The public meeting will be held on May 26, 1992, from 2-4 p.m.

ADDRESSES: The public meeting will be held in room 8068 (North Penthouse) of the Department of the Interior, 18th and C Streets, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Marshall P. Jones, Chief, Office of Management Authority, at 4401 N. Fairfax Drive, room 432, Arlington, VA 22203, telephone 703/358-2093.

SUPPLEMENTARY INFORMATION: The Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249, hereinafter referred to as CITES, is an international treaty designed to control international trade in certain animal and plant species which are or may become threatened with extinction, and are listed in Appendices to the treaty. Currently, 115 countries, including the United States, are CITES Parties. CITES calls for biennial meetings of the Conference of the Parties which review its implementation, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider amending the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of the Convention.

The eighth meeting of the Conference of the Parties (COP8) was held in Kyoto, Japan from March 2-13, 1992. The Service participated in that meeting, and by this notice calls for a public meeting to discuss the results of that meeting and the agenda items for the upcoming June meeting of the CITES Standing Committee.

Author: This notice was prepared by Dr. Susan S. Lieberman, Office of Management Authority, U.S. Fish and Wildlife Service (703/358-2095).

Dated: May 1, 1992.

Marshall P. Jones, Jr.

Chief, Office of Management Authority.

[FR Doc. 92-10900 Filed 5-8-92; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[NV-030-4830-10]

Carson City District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Nevada.

ACTION: Notice of meeting of the Carson City District Advisory Council.

DATES: June 4, 1992.

ADDRESSES: 1535 Hot Springs Road, suite 300, Carson City, Nevada.

SUMMARY: The Council will meet at 9 a.m. The agenda will include:

1. Introduction of members.
2. Approval of minutes from last meeting.
3. Election of Council Chairperson and Vice Chairperson.
4. Current Item Update.
   a. BLM reorganization.
   b. Eastern Sierra Outdoor Recreation Council.
   c. Volunteer programs.
5. At 10 a.m., comments from the public will be heard.
6. Tour forestry activities in Alpine County, California.

Leave Carson City at 10:30 a.m. Picnic lunch at Indian Creek Campground. Return to Carson City by 3:30 p.m. Transportation and lunch will be provided for Advisory Council members. Nonmembers are welcome but must provide their own transportation and lunch.

FOR FURTHER INFORMATION CONTACT: Joan Sweetland, Public Affairs Officer, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706. Phone (702) 885-6000.

Dated: April 30, 1992.

James W. Elliott,

District Manager.

[FR Doc. 92-10893 Filed 5-8-92; 8:45 am]

BILLING CODE 4310-HC-M

Bureau of Land Management

[NV-930-02-4212-12; N-54527]

Elko County, NV; Notice of Realty Action, Exchange of Public Lands in Elko, Eureka, and Clark Counties, NV; Correction.

AGENCY: Bureau of Land Management.

ACTION: Corrected notice of realty action.

SUMMARY: The notice of realty action published in the **Federal Register** on March 9, 1992, (57 FR 8351; FR Doc 92-5300) is hereby corrected for the Elko County selected lands with respect to a change in wording describing the water rights to be acquired by the Bureau, a correction to the legal description concerning geothermal resources, and reserving an additional road right-of-way. Corrections to the legal descriptions for the Elko County offered lands are also necessary. A minor change in referencing is also included.

The following changes should be made:

1. Page 8353, Column 1, Line 42; replace the word "Certificate" with "Permit".
2. Page 8353, Column 2, Line 2, should read; "NW¼, SE¼SW¼, NW¼SE¼, SE¼SE¼;".
3. Page 8353, Column 2, Line 31; add serial No. "N-48334".
4. Page 8355, Column 2, Line 20 should read; "Sec. 1, Lot 3 (within), Lot 4;".
5. Page 8355, Column 2, Lines 32 and 33; delete "T. 42 N., R. 60 E., Sec. 20 NE¼NE¼."
6. Page 8356, Column 3, Line 14 under the chart; change "I.A.3" to read "I.A.".

All other terms and conditions of the notice continue to apply.

Dated: April 28, 1992.

Nancy Phelps

Associate District Manager.

[FR Doc 92-10876 Filed 5-8-92; 8:45 am]

BILLING CODE 4310-HC-M

[NV-940-02-4212-22]

Filing of Plats of Survey; Nevada

Dated: April 30, 1992.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filing was effective at 10 a.m. on April 23, 1992.

FOR FURTHER INFORMATION CONTACT: John S. Parrish, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702-785-6543.

SUPPLEMENTARY INFORMATION: The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada on April 23, 1992:

Mount Diablo Meridian, Nevada

T. 42 N., R. 61 E.—Supplemental Plat of Section 25.

T. 38 N., R. 63 E.—Supplemental Plat of Section 30.

T. 38 N., R. 62 E.—Supplemental Plat of Section 30.

These surveys were accepted April 3, 1992, and were executed to meet certain administrative needs of the Bureau of Land Management and the Bureau of Indian Affairs.

The Plats of Survey of lands described below were also officially filed at the Nevada State Office, Reno, Nevada on April 23, 1992:

Mount Diablo Meridian, Nevada

T. 14 S., R. 65 E.—Dependent Resurvey and Survey.

T. 21 N., R. 20 E.—Dependent Resurvey and Survey.

T. 12 N., R. 60 E.—Dependent Resurvey and Survey.

These surveys were accepted April 10, 1992, and were executed to meet certain administrative needs of the Bureau of Land Management and the Bureau of Indian Affairs.

The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Robert G. Steele,

Deputy State Director, Nevada.

[FR Doc. 92-10874 Filed 5-8-92; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service

Public Scoping Meetings Regarding the Environmental Impact Statement for Proposed Oil and Gas Lease Sale 153, St. George Basin

AGENCY: Minerals Management Service (MMS), Department of the Interior.

ACTION: Notice of public scoping meetings regarding the Environmental Impact Statement (EIS) for Proposed Oil and Gas Lease Sale 153, St. George Basin.

SUMMARY: The MMS announces the upcoming Public Scoping Meetings to be held regarding the EIS for Proposed Oil and Gas Lease Sale 153, St. George Basin.

The April 1, 1992, (57 FR 11212) **Federal Register** contained the Call for Information and Nominations and Notice of Intent (NOI) to prepare an EIS for proposed Oil and Gas Lease Sale 153.

The NOI for the proposed sale announced the scoping process that will be followed for the preparation of each EIS. The scoping process will involve Federal, State, and local governments and other interested parties aiding MMS in determining the significant issues and alternatives to be analyzed in the EIS. This will be done through scoping meetings.

The area included in this sale is described in the **Federal Register** notice

mentioned above. It is hoped that the information received at the scoping meetings will aid in identifying specific proposals and alternatives.

Scoping meetings will be held as follows:

Date	Time	Location
May 11, 1992	7 p.m.	Community Hall, St. George, Alaska.
May 11, 1992	7 p.m.	City Municipal Building, Cold Bay, Alaska.
May 12, 1992	8 p.m.	City Hall Conference Room, St. Paul, Alaska.
May 12, 1992	7 p.m.	Unalaska High School Auditorium, Unalaska, Alaska.
May 28, 1992	7–9 p.m.	6th Floor Conference Room, 949 East 36th Avenue, Anchorage, Alaska.

Addtional information concerning the meetings can be otbained from: Mr. Ray Emerson, Minerals Management Service, Leasing and Environment Office, 949 East 36th Avenue, Anchorage, Alaska 99508–4302, (907) 271–6652.

Dated: May 4, 1992.

Alan D. Powers,

Regional Director, Alaska OCS Region.

[FR Doc. 92–10894 Filed 5–8–92; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

Motor Passenger Carrier or Water Carrier Finance Appiciations

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties of, or acquire control of motor passenger carriers or water carriers pursuant to 49 U.S.C. 11343–11344. The applications are governed by 49 CFR part 1182, as revised in Pur., Merger & Cont.—Motor Passenger & Water Carriers, 5 I.C.C.2d 786 (1989). The findings for these applications are set forth at 49 CFR 1182.18. Persons wishing to oppose an application must follow the rules under 49 CFR part 1182, subpart B. If no one timely opposes the application, this publication automatically will become the final action of the Commission.

MC–F–20063, filed April 9, 1992. Southwest Coaches, Inc.—Purchase—Wells Bus Service, Inc. Applicant's representative: Patrick J. Leary, 100 S. Fourth St., Marshall, MN 56258. Southwest Coaches, Inc. (Southwest) (MC–140554) and Wells Bus Service, Inc. (Wells) (MC–159215) seek approval for Southwest to purchase Wells' motor carrier authority and other assets and goodwill. Wells will discontinue operations entirely. Both carriers hold motor common carrier authority to transport passengers and their baggage between points in the United States. Included in the sale is Minnesota intrastate authority contained in TRB #18938 and CHTR 19156/37503T–78–95, and Iowa intrastate authority contained in CC–14, Docket No. MC–302. Transfer of the intrastate authority is effected under 49 U.S.C. 11341(a).

Decided: May 5, 1992.

By the Commission, the Motor Carrier Board.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–10946 Filed 5–8–92; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–8 (Sub-No. 26X)]

The Denver & Rio Grande Western Railroad Company; Abandonment Exemption, Denver, CO

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by The Denver and Rio Grande Western Railroad Company (DRGW) of 2.34 miles of rail line between the intersection of 6th and Curtis Streets (milepost 1.22) and the South Denver Interlocking Plant (milepost 3.56), in the City of Denver, Denver County, CO, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on June 10, 1992. Formal expressions of intent to file an offer [1] of finanical assistance under 49 CFR 1152.27(c)(2) must be filed by May 21, 1992, petitions to stay must be filed by May 28, 1992, and petitions for reconsideration must be filed by June 5, 1992.

ADDRESSES: Send pleadings referring to Docket No. AB–8 (Sub-No. 26X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioner's representative: James P. Gatlin, The Denver and Rio Grande, Western Railroad Company, P.O. Box 5482, Denver, CO 80217.

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610. (TDD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, decision. To purchase a copy of the full decision, write to, call, or pick up in-person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Decided: April 28, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc 92–10948 Filed 5–8–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Partial Consent Decree Pursuant to CERCLA in United States v. George Money et al.

In accordance with section 122(d)(2)(b) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. 9622(d)(2)(b), and Departmental policy at 28 CFR 50.7, notice is hereby given that on March 25, 1992, a proposed partial consent decree in *United States* v. *George Money et al.*, Civil Action No. C88–0–784, was lodged with the United States District Court for the District of Nebraska. As to the settling parties only (defendant John R. Webster Company and third-party defendant Omaha Hardwood Lumber Company, d/b/a/ OHARCO Distributors), the consent decree resolves an action brought under section 107 of CERCLA, 42 U.S.C. 9607, and requires the settlers to reimburse the United States for certain costs incurred by the United States in connection with the Economy Products Site in Omaha, Nebraska.

For a period of thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the proposed consent decree from persons who are not parties to the action. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources

Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *George Money et al.*, DOJ #90-11-2-321.

The proposed consent decree may be examined at the office of the United States Attorney for the District of Nebraska, room 8000, Zorinsky Federal Office Building, 215 North 17th Street, Omaha, Nebraska 68101, and the United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101 (attention: Gerhardt Braeckel, Assistant Regional Counsel).

A copy of the consent decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Washington, DC 20004. Copies of the decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center. Such requests should be accompanied by a check in the amount of $4.50 (25 cents per page reproduction charge) payable to "Consent Decree Library". When requesting copies, please refer to *United States* v. *George Money at al.*, DOJ #90-11-2-321.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-10913 Filed 5-8-92; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

National Cooperative Research Notification; the SQL Access Group, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), The SQL Access Group, Inc. ("the Group") on April 6, 1992, has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes to its membership. The additional notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On March 1, 1990, the Group filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on April 5, 1990 (55 FR 12750). On June 5, 1990, August 31, 1990, December 6, 1990, March 21, 1991, June 7, 1991, September 9, 1991, October 4, 1991, and January 6, 1992 the Group filed additional written notifications. The Department published a notice in the **Federal Register** in response to the additional notifications on July 18, 1990 (55 FR 29277), October 17, 1990 (55 FR 42081), January 7, 1991 (56 FR 536), April 25, 1991 (56 FR 19126), July 19, 1991 (56 FR 33308), October 8, 1991 (56 FR 50729), November 13, 1991 (56 FR 57665), and March 24, 1992 (57 FR 10191), respectively.

The following parties have become members of the Group:

Information Builders, Inc., 1250 Broadway, New York, NY 10001-3782.
VMark Software, 5 Strathmore Road, Natick, MA 01760.
Jyacc, 116 John Street, New York, NY 10038.
Must Software International, 101 Merritt 7, Norwalk, CT 06856.
Siemens Nixdorf Information Systems, Inc., 2520 Mission College Blvd., Santa Clara, CA 95054
Otto-Hahn-Ring 6, D-8000 Munich, Germany.

The following parties are no longer member of the Group:

Ashton-Tate Corporation, 2033 N. Main Street, Walnut Creek, CA 94596-3722.
Ingres Corp., 1080 Marina Village Parkway, Alameda, CA 94501.

The following member has changed its corporate name and address from: DB Access, 2900 Gordon Avenue, Suite 101, Santa Clara, CA 95051, to Cross Access, 2900 Gordon Avenue, Suite 100, Santa Clara, CA 95051.

The following members have changed their addresses from: Oracle Corporation, 100 Marine World Parkway, Suite 400, Redwood City, CA 94065, to Oracle Corporation, 500 Oracle Parkway, Redwood Shores, CA 94065, and Cincom Systems, Inc., 3350 Ruther Avenue, Cincinnati, OH 45220, to Cincom Systems, Inc., 2300 Montana Avenue, Cincinnati, OH 45211.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc 92-10912 Filed 5-8-92; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Hugo A. Ramirez, M.D., Revocation of Registration

On January 21, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Hugo A. Ramirez, M.D., of Rolling Hills Hospital, 60 East Township Road, Elkins Park, Pennsylvania 19117, proposing to deny his application executed on July 5, 1990, for a DEA Certificate of Registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated on Dr. Ramirez' lack of authorization to handle controlled substances in the Commonwealth of Pennsylvania. 21 U.S.C. 824(a)(3).

The Order to Show Cause was sent to Dr. Ramirez by registered mail. More than thirty days have passed since the Order to Show Cause was received by Dr. Ramirez and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Hugo A. Ramirez, M.D., is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that Dr. Ramirez' medical license was revoked by the Commonwealth of Pennsylvania, State Board of Medicine effective October 30, 1990. This revocation was based upon a prior revocation of Dr. Ramirez' medical license by the Texas State Board of Medical Examiners on August 21, 1987. The Texas State Board of Medical Examiners based its revocation, following a hearing, upon a finding that Dr. Ramirez engaged in unprofessional or dishonorable conduct that was likely to injure the public, to-wit: Dr. Ramirez failed to insure a sterile environment during liposuction procedures and failed to order proper tests and to properly monitor patients after the procedures were completed.

Consequently, Dr. Ramirez is no longer authorized to prescribe, dispense, administer or otherwise handle controlled substances in any schedule in the Commonwealth of Pennsylvania. The Administrator concludes that the DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. *See* 21 U.S.C. 823(f). The Administrator and his predecessors have consistently so held. See *Howard J. Reuben, M.D.*, 52 FR 8375 (1987); *Ramon Pla, M.D.*, Docket No. 86-54, 51 FR 41168 (1986); *Dale D. Shahan, D.D.S.*, Docket No. 85-57, 51 FR 23481 (1986); and cases cited therein.

No evidence of explanation or mitigating circumstances has been offered by Dr. Ramirez. Therefore, the Administrator concludes that Dr. Ramirez' application for a DEA Certificate of Registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application executed by Hugo A.

Ramirez, M.D., on July 5, 1990, for a DEA Certificate of Registration as a practitioner, be, and it hereby is, denied. This order is effective May 11, 1992.

Dated: May 5, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc 92-10934 Filed 5-8-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-26, 663]

Compaq Computer Corp.; Printed Circuit Board Department, Houston, TX; Affirmative Determination Regarding Application for Reconsideration

On March 14, 1992 and on March 17, 1992, two workers requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on February 21, 1992 and published in the **Federal Register** on March 4, 1992, (57 FR 7794).

It's claimed, among other things, that printed circuit boards are being imported from a corporate plant in Singapore. It's also claimed that workers producing desktop, laptop and notebook computers were adversely affected by increased imports.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 1st day of May 1992.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 92-10813 Filed 5-8-92; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act: Migrant and Seasonal Farmworker Programs; Proposed Planning Estimates

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed State planning estimates and allocation formula; request for comments.

SUMMARY: The Employment and Training Administration is publishing the proposed State planning estimates for Program Year (PY) 1992 (July 1, 1992 through June 30, 1993) for Job Training Partnership Act section 402 migrant and seasonal farmworker programs, the allocation formula, and the rationale used in arriving at the planning estimates.

DATES: Written comments on this notice are invited and must be received on or before June 10, 1992.

ADDRESSES: Written comments shall be submitted to Mr. Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, U.S. Department of Labor, room N-4641, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Charles C. Kane, Chief, Division of Seasonal Farmworker Programs, Telephone: (202) 535-0500 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: As required by section 162 of the Job Training Partnership Act (JTPA), the Employment and Training Administration publishes for comment the proposed State planning estimates for migrant and seasonal farmworker programs in PY 1992. JTPA section 402 grantees were selected for a two-year period which began on July 2, 1991. Since PY 1992 is the second year of the current two-year designation period, current grantees will be funded for PY 1992, unless the actions called for at 20 CFR 633.315 of the Farmworker program regulations (replacement, corrective action, termination) are appropriate. Applications, therefore, will not be accepted from other organizations.

Allocations

The allocations set forth in the appendix to this notice reflect the allocation formula described below. For PY 1992, $77,644,000 were appropriated for migrant and seasonal farmworker programs. This amount is an increase of $7,356,914 above the appropriation for PY 1991. Each year since 1987, additional funds have been included to meet the demand for training and employment services to resident alien Special Agricultural Workers (SAWs) who became eligible for the program as a result of the Immigration Reform and Control Act of 1986. In addition, the reports of the House of Representatives and the Senate Committees on Appropriations on the Department of Labor's 1992 appropriations state that the committees expect the Department to continue the farmworker housing program. The Senate committee expects the Department to increase the level of the housing program by $200,000. The Department concurs in the committees' requests.

The allocation formula is being applied to $74,092,033. The remaining $3,551,967 of the PY 1992 section 402 appropriation is being held in the section 402 national account to fund the housing program ($2,354,486), the Hope, Arkansas Migrant Rest Center ($197,481), the Association of Farmworker Opportunity Programs ($350,000), and the Farm Labor Information Bulletin project ($650,000).

Allocation Formula

(1) $67,936,033 was allocated on a State-by-State basis. The same amount was allocated to each State as was allocated for PY 1991. This ensures programmatic stability by providing a funding base for each State at its PY 1991 level.

(2) $6,156,000 was allocated on a State-by-State basis. Thirty percent of this portion of the appropriation was based on the relative numbers of migrant and seasonal farmworkers in each State as shown by 1980 Census data, and 70 percent was based on the relative numbers of SAWs in each State as shown by the most recent Immigration and Naturalization Service data.

Signed at Washington, DC, this 1st day of May, 1992.

Roberts T. Jones,

Assistant Secretary of Labor.

BILLING CODE 4510-30-M

U. S. DEPARTMENT OF LABOR
EMPLOYMENT AND TRAINING ADMINISTRATION
PY 1992 MSFW ALLOTMENTS TO STATES

	PY 1992 BASE	PY 91–PY 92 INCREASES	PY 1992 TOTAL
Alabama	890,819	30,855	921,674
Alaska	0	0	0
Arizona	1,421,352	198,783	1,620,135
Arkansas	1,311,695	46,262	1,357,957
California	12,271,667	2,529,488	14,801,155
Colorado	851,985	55,902	907,887
Connecticut	213,629	16,164	229,793
Delaware	129,619	6,133	135,752
District of Columbia	0	0	0
Florida	4,518,737	499,418	5,018,155
Georgia	1,822,337	113,692	1,936,029
Hawaii	278,876	11,740	290,616
Idaho	944,459	53,836	998,295
Illinois	1,366,828	164,480	1,531,308
Indiana	875,629	32,214	907,843
Iowa	1,481,617	49,797	1,531,414
Kansas	767,429	35,167	802,596
Kentucky	1,534,344	46,896	1,581,240
Louisiana	896,585	30,619	927,204
Maine	370,445	11,824	382,269
Maryland	321,938	22,223	344,161
Massachusetts	338,359	39,344	377,703
Michigan	968,883	43,253	1,012,136
Minnesota	1,442,160	45,948	1,488,108
Mississippi	1,643,641	50,346	1,693,987
Missouri	1,237,716	39,758	1,277,474
Montana	756,934	23,133	780,067
Nebraska	865,511	32,784	898,295
Nevada	168,461	34,450	202,911
New Hampshire	127,664	3,921	131,585
New Jersey	348,724	61,434	410,158
New Mexico	596,228	58,711	654,939
New York	1,783,560	205,328	1,988,888
North Carolina	3,315,336	147,976	3,463,312
North Dakota	531,773	16,046	547,819
Ohio	1,019,389	34,650	1,054,039
Oklahoma	661,123	34,223	695,346
Oregon	1,086,886	105,404	1,192,290
Pennsylvania	1,343,813	61,543	1,405,356
Puerto Rico	3,302,448	116,613	3,419,061
Rhode Island	0	0	0
South Carolina	1,209,926	44,560	1,254,486
South Dakota	786,754	23,696	810,450
Tennessee	1,079,137	36,532	1,115,669
Texas	5,816,777	645,017	6,461,794
Utah	262,941	20,523	283,464
Vermont	241,980	7,312	249,292
Virginia	1,115,211	63,847	1,179,058
Washington	1,754,317	141,457	1,895,774
West Virginia	247,399	8,275	255,674
Wisconsin	1,386,070	46,465	1,432,535
Wyoming	226,922	7,958	234,880
FORMULA TOTAL	67,936,033	6,156,000	74,092,033
TA/HOUSING	2,351,053	1,200,914	3,551,967
NATIONAL TOTAL	70,287,086	7,356,914	77,644,000

[FR Doc. 92–10979 Filed 5–8–92; 8:45 am]
BILLING CODE 4510–30–C

Office of the Assistant Secretary for Veterans' Employment and Training

Solicitation For Grant Application: Job Training Partnership Act, Title IV, Part C, Program Year 1992

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, Department of Labor.

ACTION: Notice.

SUMMARY: This notice sets forth the procedures for obtaining an application for funds for the operation of employment and training programs under the Title IV, Part C, of the Job Training Partnership Act.

DATES: An application package and instructions for completion will now be made available for issuance on or about May 5, 1992. The closing date for receipt of a completed application in response to the SGA, or a letter of intent to make a subsequent application, will be no later than 4:30 pm, May 27, 1992.

ADDRESSES: A copy of the application package and instructions will be mailed to all States entities which presently administer JTPA Title IVC grants and to the Employment Security Agency of each State.

Signed at Washington, DC, this 6th day May 1992.

Robin L. Higgins,

Deputy Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 92–10978 Filed 5–8–92; 8:45 am]

BILLING CODE 4510–79–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following two meetings:

Name: Special Emphasis Panel in Electrical and Communications Systems.

Date and Time: May 27, 1992; 8:30 a.m. to 5 p.m.

Place: Room 523, NSF, 1800 G St., NW., Washington, DC 20550.

Contact Person: Dr. Radhakisan Baheti, Program Director, Division of Electrical and Communications Systems, NSF, room 1151. Telephone: (202) 357–9618.

Agenda: To review and evaluate research proposals submitted to the Research Initiation Award (RIA) and Research Equipment Grant (REG) Programs.

Date and Time: June 5, 1992; 8:30 a.m. to 5 p.m.

Place: Room 1242, NSF, 1800 G St., NW., Washington, DC 20550.

Contact Person: Dr. Radhakisan Baheti, Program Director, Division of Electrical and Communications Systems, NSF, room 1151. Telephone: (202) 357–9618.

Agenda: To review and evaluate unsolicited proposals submitted to the Systems Theory Program.

Types of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

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 exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 6, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–10954 Filed 5–8–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Severe Accidents; Meeting

The ACRS Subcommittee on Severe Accidents will hold a meeting on May 27, 1992, in room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, May 27, 1992—8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss the revision to NUREG–1365, Severe Accident Research Program Plan.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Dean Houston (telephone 301/492–9521) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: May 4, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–10938 Filed 5–8–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Joint Subcommittees on Materials and Metallurgy and Advanced Reactor Designs; Meeting

The ACRS Subcommittees on Materials and Metallurgy and Advanced Reactor Designs will hold a joint meeting on May 21, 1992, at the Holiday Inn Financial District, 750 Kearny Street, San Francisco, CA.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss privileged information related to the Department of Energy's (DOE's) Advanced Liquid-Metal Reactor (ALMR) program (5 U.S.C. 552b(c)(4)).

The agenda for the subject meeting shall be as follows:

Thursday, May 21, 1992—8:30 a.m. until the conclusion of business.

The Subcommittees will discuss the application of the high temperature structural material in the ALMR.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statement should notify the ACRS staff members named below as

far in advance as is practicable so that appropriate arrangements can be made. During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff and its consultants, GE Nuclear Energy and its consultants, DOE, as appropriate, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineers, Mr. Elpidio Igne (telephone 301/492–8192) or Mr. Dean Houston (telephone 301/492–9521) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individuals one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: May 5, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc 92–10939 Filed 5–8–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–29541; License No. 12–24801–01, EA 92–058]

In the Matter of the American Inspection Co., Inc., Itasca, IL; Order Suspending License (Effective Immediately)

I

The American Inspection Company, Inc., (AMSPEC or Licensee) is the holder of Byproduct Material License 12–24801–01 (license) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 34 on January 6, 1987. The license authorizes the use of iridium 192 and cobalt 60 for industrial radiography in devices approved by the NRC or an Agreement State. The Licensee is also authorized to use cesium 137 for instrument calibration and in an x-ray crawler to determine the location of the device. The license also authorizes the use of licensed materials at temporary job sites anywhere in the United States where the NRC maintains jurisdiction for regulating the use of licensed material. The Licensee also operates in Texas under an Agreement State license. The NRC license was due to expire on January 31, 1992; however, on December 20, 1991, the Licensee filed an application for renewal of the license. Consequently, the license remains in effect.

II

Since 1989, radiographic operations under the NRC license have been performed out of field facilities in Beaumont, Texas; St. Croix, Virgin Islands; Puerto Rico; and Trainer, Pennsylvania. The President of the company has been the Radiation Safety Officer (RSO) from 1987 to the present. The Licensee designates Radiation Protection Officers (RPOs) as its management representatives at its field facilities responsible for, among other things, training and qualification of personnel for radiation safety certification. The NRC license requires that the Licensee follow procedures in its Radiation Safety Program Manual, submitted in support of the license application.

III

An NRC inspection of the Licensee's activities in St. Croix, Virgin Islands, was conducted on July 22–23, 1991. As a result of the inspection findings regarding the accuracy of information provided and management practices at the St. Croix facility, the NRC Office of Investigations (OI) initiated an investigation on September 4, 1991. Investigation activities are currently ongoing. The inspection and investigation have already identified significant violations of NRC requirements. These violations include: (1) Falsification of radiographer qualification records, (2) providing false information to an NRC inspector, (3) inadequate training of site RPOs, (4) allowing individuals to perform radiography prior to ensuring that the individuals were fully qualified, and (5) the unauthorized use of radiography devices. The findings are discussed in more detail below.

1. Between November 15, 1991, and November 30, 1991, an AMSPEC employee, under the direction of the Vice President, deliberately falsified a radiation safety examination to indicate that an individual had satisfactorily completed the examination that is required by 10 CFR part 34 and condition 17 of the license prior to performing the duties of a radiographer's assistant. The examination was completed and signed by someone other than the examinee. The examination is part of the process by which the Licensee qualifies an individual to use licensed materials as a radiographer's assistant, as described in chapter VIII of the Licensee's Radiation Safety Program Manual.

2. A radiographer employed at the Licensee's St. Croix, Virgin Islands, facility provided false information to an NRC inspector during the July 22–23, 1991, inspection. Specifically, the NRC inspector was informed that a licensed radiography device and radioactive source had not been used to radiograph when, in fact, a subsequent NRC investigation has shown that the radiographer had knowledge at the time of the inspection that the device and source had been used for such a frivolous purpose that was not authorized under the license.

3. Individuals at the Licensee's St. Croix, Virgin Islands, facility deliberately falsified utilization logs required to be maintained to show compliance with 10 CFR 34.27. The logs indicated that certain radiographers were assigned radiographic exposure devices for conducting radiographic operations performed between February 1991 and May 1991, when, in fact, the radiographers listed on the logs were not at the sites on the dates indicated.

4. Between September 24, 1990, and July 26, 1991, individuals were allowed to perform independent radiographic operations acting as radiographers prior to being properly certified to use radiographic exposure devices and sealed sources. At least two radiographers' assistants at the St. Croix, Virgin Islands, facility performed radiographic operations during this time period without the supervision of a radiographer as required by 10 CFR 34.44.

5. Licensee did not follow the required procedures for training and qualifying RPOs prior to allowing at least three unqualified individuals to perform as RPOs between January 4, 1990, and November 15, 1991. These individuals were certified as RPOs by the Licensee even though they had not received training by the RSO as specified in chapters III, VII and VIII of the Licensee's Radiation Safety Program Manual.

6. Between September 1990 and November 30, 1991, records of quarterly audits, as required by chapter IX of the Licensee's Radiation Safety Program Manual, were falsified by the individual acting as the RPO at the St. Croix, Virgin Islands, facility and by the Vice President, who was the RPO at the Beaumont, Texas, facility. Notwithstanding records to the contrary,

quarterly audits were not performed during this period.

7. The Licensee's training and certification program did not adequately demonstrate that individuals were qualified to perform radiographic operations as either radiographers or radiographers' assistants. Specifically, the program was inadequate in that:

A. On October 30, 1990, the Vice President (who was RPO at the Beaumont, Texas, facility) issued a radiation safety certification card to an individual to show that he was certified to function under the license as a radiographer or radiographer's assistant when the RPO did not know for certain whether the individual had completed the training and certification program described in the Licensee's Radiation Safety Program Manual.

B. Between November 1989 and August 3, 1991, the Licensee's RPOs at the St. Croix, Virgin Islands, and Beaumont, Texas, facilities compromised the validity of the radiation safety examination process used to ascertain qualifications of radiographers by permitting the examination to be taken in an unmonitored location where reference materials were available.

C. Training records of newly hired radiographer trainees/assistants and radiographers reflected inaccurate instructional hours. Specifically, data was recorded which indicated that these individuals had eight hours of formal training and as required by chapter VII of the Licensee's Radiation Safety Program Manual. The training records for 1990 and 1991 indicate that individuals received the required eight hours training, when in fact, in at least four cases, no training was received. This training is required prior to allowing these individuals to use licensed materials as a radiographer or radiographer trainee/assistant.

D. Between January 1991 and November 1991, the Licensee did not provide copies of operating and emergency procedures to all the radiographers and radiographers' assistants at the St. Croix, Virgin Islands, facility prior to permitting these individuals to perform their respective duties. The failure to provide these procedures is a violation of 10 CFR 34.31 and the Licensee's training and certification program.

8. Licensee management, including the RSO (the President of the company) and the managers at the St. Croix, Virgin Islands, facility failed to ensure that field radiographic operations were conducted in a manner consistent with the established safety requirements of the license and NRC regulations. For example, on July 22, 1991, and NRC inspector observed a radiographer fail to perform radiation surveys of the entire circumference of the exposure device and guide tube following two radiographic operations, as required by 10 CFR 34.43 (b). Licensed material was also used in 1991, for a frivolous purpose that was not authorized by the NRC regulations. Additionally, a high radiation area was not conspicuously posted while radiographic operations were performed on July 22, 1991, by a radiographer assigned to the St. Croix, Virgin Islands, facility. This is contrary to 10 CFR 20.203.

Based on the above, it appears that the Licensee has violated numerous NRC requirements, provided false information to NRC inspectors, and failed to implement an adequate radiation safety program. Moreover, although the investigation is ongoing, the information developed to date indicates that a number of the violations appear to be deliberate. The violations also involve the RSO's and RPOs' failures to ensure that individuals are adequately trained and certified prior to using radiographic devices, failure to ensure that radiographic devices are not used for unauthorized purposes, failure to ensure that procedures are followed, and failure to implement basic radiation protection practices. In addition, the involvement of the Licensee's corporate officers, including the President and Vice President, in these violations raises serious questions regarding the Licensee's ability or willingness to comply with the Commission's requirements to protect the public health and safety. The Commission must be able to rely on its licensees to provide complete and accurate information. Deliberate violation of the Commission's requirements cannot and will not be tolerated.

Consequently, I lack the requisite reasonable assurance that the Licensee's current operations can be conducted under License No. 12–24801–01 in compliance with the Commission's requirements and that the health and safety of the public, including the Licensee's employees, will be protected. Therefore, the public health, safety, and interest require that License No. 12–24801–01 be suspended pending the completion of the investigation and that licensed material be placed in locked, safe storage. Furthermore, pursuant to 10 CFR 2.202, I find that the public health, safety and interest require that this Order be immediately effective.

V

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 30 and 34, *it is hereby ordered*, effective immediately, that:

A. The authority to perform radiographic operations under License No. 12–24801–01 is hereby suspended pending further action by the NRC. All other applicable Commission requirements, including those in 10 CFR part 20, remain in effect.

B. The Licensee shall:

1. By midnight, local time, of the date of this Order, cease all radiographic operations.

2. Immediately thereafter return all byproduct material possessed under this license to locked, safe storage at the licensee's facilities and by 4 p.m. e.d.t., of the day following the date of this Order, notify NRC Region II or the NRC Headquarter's Duty Officer of the status of all licensed material in its possession.

c. Activities authorized under the general license in accordance with 10 CFR 150.20 to use byproduct material licensed by an Agreement State in areas where NRC maintains jurisdiction are also hereby suspended pending further action by the NRC.

The Regional Administrator, NRC Region II, may, in writing, relax or rescind this order upon demonstration by the Licensee of good cause.

VI

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this order may, submit an answer to this order within 20 days of the date of this order. The answer may consent to this order. Unless the answer consents to this order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this order and set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why this order should not have been issued. Any answer filed within 20 days of the date of this Order may include a request for a hearing. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also should be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, 101 Marietta Street, NW., suite 2900, Atlanta, Georgia 30323 and to

the Licensee if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this order should be sustained.

In the absence of any request for hearing, the provisions specified in section IV above shall be final 20 days from the date of this order without further order or proceeding. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 30th day of April 1992.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety Safeguards and Operation Support.

[FR Doc. 92-10940 Filed 5-8-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461]

In the Matter of Illinois Power Co. and Soyland Power Cooperative, Inc. (Clinton Nuclear Power Station); Exemption

I.

The Illinois Power Company, (IP), and Soyland Power Cooperative, Inc. (the licensees), are the holders of Facility Operating License No. NPF-62 (the license) which authorizes operation of the Clinton Power Station, Unit No. 1 (CPS). The license provides, among other things, that it is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

The facility consists of a boiling water reactor and other supporting facilities located at the licensee's site in Harp Township, DeWitt County, Illinois.

II.

By letter dated December 23, 1991, IP (the licensee) requested a permanent exemption from the local leak rate testing of the Reactor Core Isolation Cooling (RCIC) vacuum breaker line associated with containment penetration IMC-44 and the leakage rates associated with the valve packing and body-to-bonnet seal of test boundary valve 1E51-F374, as required by appendix J to 10 CFR part 50, and applied for an amendment to Operating License No. NPF-62 to change certain provisions of the Technical Specifications (TS) for the CPS. The requested exemption is needed since the strict application of the requirements of appendix J to 10 CFR part 50 is not necessary to achieve the underlying purpose of the rule and would impose undue hardships to the licensee.

Valve 1E51-F374 is associated with containment penetration 1MC-44, the Reactor Core Isolation Cooling (RCIC) vacuum breaker line. The containment isolation valves for this penetration are outside of containment; there are no valves in the line inside containment, where the line simply ends, open to the containment atmosphere. Valve 1E51-F374 is located in the line outside containment, between the containment wall and the first containment isolation valve. It is a block valve which is closed during the local leak rate testing of the adjacent containment isolation valve, allowing that valve to be tested in the "forward" direction; that is, with pressure applied in the same direction as that which would exist if the valve were required to perform its safety function (outward from containment). The position of valve 1E51-F374, outside containment but before the first containment isolation valve, makes the valve's body part of the containment boundary, and leakage through it to the environment (such as through the packing or body-to-bonnet seal) is containment leakage that must be measured and maintained within limits.

Valve 1E51-F374 is a gate valve. Because this valve is normally in the open position, the valve's packing and body-to-bonnet seal are normally exposed to the containment atmosphere. These potential leakage pathways are therefore required to be included in the local leak rate test boundary per appendix J. However, because of the gas valve design, it cannot be confirmed that the valve's packing and body-to-bonnet seal are exposed to the test pressure when the valve is in the closed position (i.e., during the performance of local leak rate tests). As a result, the requirements of appendix J would require this valve to be in the open (i.e., post-accident) position during local leak rate testing.

As identified in LER 90-018, several alternatives were evaluated to correct this testing deficiency. One alternative consisted of identifying alternate testing configuration. Another alternative consisted of modifying the valve to allow the body-to-bonnet seal and valve packing to be pressurized during local leak rate testing. Modification of the valve was determined by the licensee to be inappropriate as such a modification would degrade the valve's sealing capability (valve-to-seat), making it more difficult to successfully pass the Type C tests on the adjacent isolation valves. Further, performance of such a modification would result in radiation exposure during implementation (the valve is located in the Residual Heat Removal heat exchanger room).

Alternate testing configurations that were evaluated consisted of installing a plug inside containment in the end of this line and/or connecting the leak rate testing rig to the pipe end. As this line terminates over and approximately 10 feet above the suppression pool, a temporary scaffold would have to be erected to gain access to the pipe end. The licensee estimates that erecting and disassembling a temporary scaffold in this area would take approximately 80 man-hours and result in approximately 100 mrem radiation exposure each refueling outage. (It should be noted that this estimate is based on current plant conditions with no known leading fuel and no significant safety/relief valve leakage. As a result, background radiation levels for performing these activities would likely increase over plant life). In addition, erecting a temporary scaffold would create additional radioactive, waste and would increase the potential for foreign objects to be introduced into the suppression pool.

The licensee has evaluated each of these alternatives and determined that the additional radiation exposure and resource expenses far outweigh the benefits to be gained by including the valve packing and body-to-bonnet seal of valve 1E51-F374 in the local leak rate test boundary. This valve is located in a nominal 3-inch line and is exercised each refueling outage solely for the performance of the Type C test for this containment penetration's associated isolation valves. This line normally contains air at containment pressure and temperature. As a result, the valve packing and body-to-bonnet seal are not subjected to degradation due to large thermal or hydraulic transients. Further, any air leakage through these pathways would be filtered by the standby gas treatment system prior to release to the environment. For these reasons, the licensee believes that leakage through these potential leakage pathways would not be significant, and therefore, inclusion of these pathways in the local leak rate test boundary is not necessary.

In addition, these potential leakage pathways are included in the Integrated Leak Rate Test (ILRT) boundary, and thus, any leakage through these pathways will be included in the total leakage rate measured during an ILRT. To provide added assurance that these pathways do not constitute a significant leakage source and to provide additional indication when repairs are necessary, the body-to-bonnet seal and valve packing of valve 1E51–F374 will be leak tested with a soap solution during each ILRT.

The staff finds that the additional assurance of leak-tight integrity of the subject leakage pathways provided by local leak rate testing, when compared to the proposed alternate soap solution test during each ILRT, is not great enough to justify the costs associated with local leak rate testing, described above. The small size and mild environment of the valve makes it unlikely that the packing or body-to-bonnet seals will degrade quickly and experience a leak that would add significantly to the radiological consequences of a LOCA, considering also the action of the standby gas treatment system. The local leak rate test, performed at every refueling outage (but at least every two years), would be replaced by the roughly equivalent ILRT-with-soap-solution test performed approximately every 3⅓ years (typically every other refueling outage). This increase in test interval is acceptable, considering the likely stable nature of the leakage pathways, as discussed above.

III.

Accordingly, the NRC staff has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and that special circumstances are present pursuant to 10 CFR 50.12(a)(2)(ii) which states, "application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule." The NRC staff hereby grants an exemption with respect to one of the requirements of 10 CFR part 50, appendix J:

The Clinton Power Station, Unit No. 1 Technical Specifications may be revised to allow the exclusion of the local leak rate testing of the Reactor Core Isolation Cooling (RCIC) vacuum breaker line associated with containment penetration 1MC–44 and the leakage rates associated with the valve packing and body-to-bonnet seal of test boundary valve 1E51–F374, as required by appendix J to 10 CFR part 50. This exemption does not alter the existing requirements for any other containment isolation valves.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the quality of the human environment (57 FR 18938).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 4th day of May 1992.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–10941 Filed 5–8–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–440–A, 50–346–A (Suspension of Antitrust Conditions); ASLBP No. 91–644–01–A]

Atomic Safety and Licensing Board; Hearing (Oral Argument on Parties' Summary Disposition Filings)

May 4, 1992.

In the Matter of Ohio Edison Co. (Perry Nuclear Power Plant, Unit 1, Facility Operating License No. NPF–58) The Cleveland Electric Illuminating Co.; The Toledo Edison Co. (Perry Nuclear Power Plant, Unit 1, Facility Operating License No. NPF–58) (Davis-Besse Nuclear Power Station, Unit 1, Facility Operating License No. NPF–3).

On May 1, 1991, the NRC Staff issued an order published in the **Federal Register**, stating that it had denied the September 1987 and May 1988 applications of Ohio Edison Company, Cleveland Electric Illuminating Company, and Toledo Edison Company (hereinafter referred to as "licensees") to amend the operating licenses for the Perry Nuclear Power Plant, Unit 1, and the Davis-Besse Nuclear Power Station, Unit 1, by suspending the antitrust conditions in those licenses as applied, respectively, to them. (56 FR 20,057 (1991)). This adjudicatory proceeding was convened to consider the licensees' challenges to the Staff's order.

In accordance with our Prehearing Conference Order of October 7, 1991, LBP–91–38, 34 NRC 229 (1991), now pending before the Board are motions and cross-motions for summary disposition filed by licensees, the NRC Staff, and intervenors City of Cleveland, Ohio (Cleveland), American Municipal Power-Ohio, Inc., Alabama Electric Cooperative, and the United States Department of Justice. In these summary disposition pleadings, the parties address the following "bedrock" legal issue:

Is the Commission without authority as a matter of law under section 105 of the Atomic Energy Act of 1954, 42 U.S.C. 2135, to retain antitrust license conditions if it finds that the actual cost of electricity from the licensed nuclear power plant is higher than the cost of electricity from alternative sources, all as appropriately measured and compared.

In addition, the parties address the issue, raised by Cleveland, as to whether the licensees' amendment requests are barred by res judicata, collateral estoppel, laches, or law of the case.

Please take notice that a hearing will be conducted in this proceeding to permit the parties' to present oral argument regarding their summary disposition filings. This oral argument will be held on Wednesday, June 10, 1992, beginning at 9:30 a.m. in the NRC Public Hearing Room, Fifth Floor, West Tower, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland. The allocation of time for argument and the order of presentation are as set forth in the Board's Order of March 19, 1992.

Bethesda, Maryland, May 4, 1992.

For the Atomic Safety and Licensing Board.

Marshall E. Miller,

Chairman, Administrative Judge.

[FR Doc. 92–10936 Filed 5–8–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–29626–OM–2; ASLBP No. 92–662–06–OM–2]

Piping Specialists, Inc. and Forrest L. Roudebush d.b.a. PSI Inspection, and d.b.a. Piping Specialists, Inc., Kansas City, MO; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

Piping Specialists, Inc. and Forrest L. Roudebush d.b.a. PSI Inspection, and d.b.a. Piping Specialists, Inc., Kansas City, Missouri

Byproduct Material License No. 24–24826–01

EA 92–054

This Board is being established pursuant to the request by Piping Specialists, Inc., the Licensee, for a hearing regarding an Order issued by the Director, Office of Enforcement, dated April 22, 1992, entitled "Order Modifying Order Suspending License

(Effective Immediately) and Order Revoking License." The Order continued the suspension of activities under License No. 24–24826–01 effective immediately and ordered that the License be revoked.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board consists of the following Administrative Judges:

Peter B. Bloch, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Issued at Bethesda, Maryland, this 4th day of May 1992.

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 92–10937 Filed 5–8–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 030–05980–ML; 030–05982–ML; ASLBP No. 92–659–01–ML]

Atomic Safety and Licensing Board; Before Administrative Judges: Thomas S. Moore, Chairman; Frederick J. Shon; James H. Carpenter

In the Matter of Safety Light Corp., *et al.* (Bloomsburg Site Decommissioning)

May 5, 1992.

Order

In an April 8, 1992 order, we tentatively scheduled a prehearing conference in the above-captioned proceeding for May 15, 1992. The parties are advised that that tentatively scheduled prehearing conference now will be held at 9:30 a.m., Friday, May 15, 1992, in the Board's fifth floor hearing room, 4350 East West Highway, Bethesda, Maryland.

Bethesda, Maryland, Dated: May 5, 1992.

It is so ordered.

The Atomic Safety and Licensing Board.

Thomas S. Moore,

Chairman, Administrative Judge.

Frederick J. Shon, I04Member, Administrative Judge.

Dr. James H. Carpenter,

Member, Administrative Judge.

[FR Doc. 92–10935 Filed 5–8–92; 8:45 am]

BILLING CODE 7590–01–M

POSTAL SERVICE

Bulk AO Service to Canada

AGENCY: Postal Service.

ACTION: Proposed establishment of bulk AO service to Canada.

SUMMARY: Pursuant to its authority under 39 U.S.C. 407, the Postal Service is proposing to establish a new service for bulk mailings of certain AO mail to Canada.

DATES: Comments on the proposed rules must be received on or before June 10, 1992.

ADDRESSES: Director, Office of International Business Management, International Business Department, U.S. Postal Service, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in suite 4400–E, 470 L'Enfant Plaza East SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Rainer K. Hengst, (202) 268–6095.

SUPPLEMENTARY INFORMATION: AO mail includes regular printed matter, books and sheet music, publishers' periodicals, matter for the blind, and small packets. The Postal Service's existing bulk services for AO mail, International Surface Air Lift (ISAL) and International Priority Airmail (IPA), are not available to Canada. Consequently, at present, mailers sending AO mail to Canada must pay postage at the published single-piece air or surface rate regardless of either the size of the mailing or the amount and nature of worksharing performed.

The Postal Service believes that its not offering a bulk AO service to Canada encourages business mailers and other large customers to use alternative service providers for delivery of their AO mail to Canadian addressees. In order to become more competitive, the Postal Service is proposing to establish a new AO service to Canada. The proposed service would be available from all U.S. post offices to all destinations in Canada. Mail would be conveyed by surface transportation from the United States to Canada, where it would be entered into the Canadian surface mail system for delivery.

The proposed service would be available for regular printed matter, books and sheet music, publishers' periodicals, and small packets. The per-item weight limit would be 2 pounds. Items weighing more than 2 pounds and matter for the blind of any weight would not be eligible. Mailers of publishers' periodicals to Canada would be free to use the proposed service if they qualified. However, for all but a few weight steps, such mailers would have access to more advantageous rates under the current Publishers' Periodicals rate schedule.

Mail sent through the proposed service would fall into one of two rate categories based on size. The letter-size rate category would include items whose length was less than or equal to 11½ inches, height was less than or equal to 6⅛ inches, and thickness was less than or equal to ¼ inch. The flat-size rate category would include items not fitting into the letter-size rate category whose length was less than or equal to 15 inches, height was less than or equal to 11½ inches, and thickness was less than or equal to ¾ inch. Items exceeding one or more of the flat-size rate category's maximum dimensions would not be eligible for the proposed service.

The qualifying minimum for the proposed service would vary depending on whether the mailing contained letter-size items, flat-size items, or a combination of both. A mailing containing only letter-size items would be required to weigh at least 50 pounds to qualify for the service. A mailing containing only flat-size items would be required to weigh at least 100 pounds to qualify for the proposed service. Finally, a mailing containing both letter-size and flat-size items would also be required to weigh at least 100 pounds to qualify for the proposed service.

Postage for mail sent through the proposed service would be calculated according to a break-point system, with rates including both per-piece and per-pound elements. Within this overall structure, the break-points, minimum per-piece charges, and per-piece and per-pound rate elements would vary depending on the rate category. The proposed rates are shown in table 1.

The letter-size rate category's break-point would be 1 ounce. For letter-size items weighing 1 ounce or less, postage would be 28 cents per piece. For letter-size items weighing over 1 ounce, the rate would be 26 cents per piece plus 40 cents per pound. Postage for letter-size items weighing over 1 ounce would be calculated by multiplying the number of pieces in the mailing by the per-piece rate (26 cents), multiplying the weight of the mailing by the per-pound rate (40 cents), and then adding the two totals together.

The flat-size rate category's break-point would be 5 ounces. For flat-size items weighing 5 ounces or less, postage would be 53 cents per piece. For flat-size

items weighing over 5 ounces, the rate would be 30 cents per piece plus $1.00 per pound. Postage for flat-size items weighing over 5 ounces would be calculated by multiplying the number of pieces in the mailing by the per-piece rate (30 cents), multiplying the weight of the mailing by the per-pound rate ($1.00), and then adding the two totals together.

The method of postage payment for the proposed service would be postage meter for non-identical weight items and permit imprint or postage meter for identical weight items. Mailers would also be permitted to use permit imprint for non-identical weight items if authorized to participate in the postage payment program described in Domestic Mail Manual (DMM) sections 145.7, Manifest Mailing System (MMS); 145.8, Optional Procedure (OP) Mailing System; or 145.9, Alternate Mailing Systems (AMS).

A number of preparation requirements designed to minimize the Postal Service's processing and handling costs would apply to the proposed service. First, users would be required to sort their mail according to the 13 Canadian Postal Code separations shown in table 2. Mail being sent to each of these separations would have to be separately sacked and labeled as described below.

In addition to sorting their mail according to Canadian destinations, users of the proposed service would be required to separate their mail by rate category (letter-size or flat-size). Within these two separations, users would further be required to sort their mail according to whether it was subject to the per-piece charge or the piece-plus-pound rate.

All mail sent through the proposed service would have to be sacked and appropriately labeled. No residual mail would be allowed in a dispatch. Commingling would not be permitted for mail from different rate categories or for mail subject to different postage rates. Thus, for each of the 13 Canadian Postal Code separations, letter-sized mail weighing 1 ounce or less would have to be sacked and labeled separately from both letter-sized mail weighing more than 1 ounce and all flat-size mail. Similarly, flat-size mail weighing 5 ounces or less would have to be sacked and labeled separately from both flat-size weighing more than 5 ounces and all letter-size mail.

Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments, and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites interested persons to submit written data, views, or arguments concerning the proposed rules.

Authority: 39 U.S.C. 407, 410.

Stanley F. Mires,

Assistant General Counsel,

Legislative Division.

TABLE 1

Weight	Rate
Letter-Size Rate:	
1 ounce or less	28 cents per piece.
Over 1 ounce	26 cents per piece and 40 cents per pound.
Flat-Size Rate:	
5 ounces or less	53 cents per piece.
Over 5 ounces	30 cents per piece and $1.00 per pound.

TABLE 2.—SORTATION REQUIREMENTS

Canadian province	Canadian postal code	Label (including the routing code)
Newfoundland [1], Nova Scotia.	A, B	B0J 9Z0 044 HALIFAX NS FWD
Prince Edward Isl. New Brunswick.	C, E	E0G 9Z0 044 ST JOHN NB FWD
Quebec	G, H, J, and uncoded.	H0A 9Z0 099 MONTREAL PQ FWD
Ontario	K	K0A 9Z0 099 OTTAWA ON FWD
Ontario	L, M. P and uncoded.	L4W 2T0 140 TORONTO BMF ON FWD
Ontario	N	N0L 9Z0 48399 LONDON ON FWD
Manitoba	R	R0C 9Z0 568 WINNIPEG MB FWD
Saskatchewan.	S	S0G 9Z0 568 REGINA SK FWD
Alberta	T0C, T0J, T0K, T0L, T0M, T0S, T1, T2, T3, T4, and uncoded.	T0S 9Z0 568 CALGARY AB FWD
Alberta	All other T codes.	T0N 9Z0 568 EDMONTON AB FWD
British Columbia.	V	V0T 9Z0 98001 VANCOUVER BC FWD
Northwest Teritories.	X	T0N 9Z0 568 EDMONTON AB FWD
Yukon Territory.	Y	V0T 9Z0 98001 VANCOUVER BC FWD

[1] Include Labrador and St. Pierre and Miquelon in Newfoundland separation.

[FR Doc. 92-10863 Filed 5-8-92; 8:45 am]

BILLING CODE 7710-12-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S)

(1) *Collection title:* Appeal Under the Railroad Retirement Act and Railroad Unemployment Insurance Act.

(2) *Form(s) submitted:* HA-1.

(3) *OMB Number:* 3220-0007.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiraton date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 1,150.

(9) *Total annual responses:* 1,150.

(10) *Average time per response:* .332 hours.

(11) *Total annual reporting hours:* 382.

(12) *Collecton description:* Under sections 7(b)(3) of the Railroad Retirement Act and section 5(c) of the Railroad Unemployment Insurance Act, a person aggrieved by a decision of his or her application for an annuity or other benefit has the right to appeal to the RRB. The collection will provide the means for the appeals action.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 92-10933 Filed 5-8-92; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-18688; 811-4437]

Municipal Lease Securities Fund, Inc.; Application

May 1, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Municipal Lease Securities Fund, Inc.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 3, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 26, 1992, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington DC 20549. Applicant, 208 South LaSalle Street, Suite 2040, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Staff Attorney, at (202) 504-2406, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management investment company that is organized as a corporation under the laws of Minnesota. On May 13, 1986, applicant registered under the Act and filed a registration statement under the Securities Act of 1933 to register an indefinite number of shares of applicant's common stock. Applicant's registration statement as declared effective on August 11, 1986, and applicant commenced its initial public offering on or about August 11, 1986.

2. Pursuant to an examination of applicant conducted by the SEC in October and November 1989, on November 9, 1989, appplicant voluntarily suspended all sales of shares due to applicant's failure to calculate the net asset value per share in accordance with the provisions of the Act.

3. On December 18, 1989, the SEC filed a civil action against applicant, Hutchinson, Fox, Inc. (at that time, a registered broker-dealer and the underwriter of applicant's shares), Hutchinson Advisers, Inc. (applicant's investment adviser), and Howard H. Hutchinson (president of the foregoing entities) alleging violations of provisions of the Act and the Securities Act of 1933. On the same day, at the SEC's request, the United States District Court for the Northern District of Illinois (the "Court") entered orders against applicant restraining sales and redemptions of applicant's shares and appointing Richard A. Lindrooth as applicant's receiver (the "Receiver") to assume management responsibilities for applicant, to collect and distribute payments as necessary, to pursue alternatives for the constitution, operation, and management of applicant and to submit such alternatives to applicant's shareholders. *SEC* v. *Municipal Lease Securities Fund, Inc.*, No. 89-C9312 (N.D. Ill. Dec. 18, 1989). On September 9, 1991, the Court dismissed the action for a permanent injunction pursuant to a joint motion by applicant and the SEC. The Court has retained jurisdiction over matters relating to applicant. Applicant anticipates that the court orders pending against it will be vacated upon its dissolution.

4. On February 12, 1991, the Receiver mailed proxy materials relating to the liquidation of applicant to applicant's shareholders. At a special meeting held on March 14, 1991, applicant's shareholders approved the Plan of Complete Liquidation and Dissolution of Municipal Lease Securities Fund, Inc. (the "Plan") and the extended sale method of liquidation. Under this method, municipal leases with maturities subsequent to January 30, 1994 will be sold, and municipal leases with shorter maturities will be held to maturity. The alternative to the extended sale method of liquidation was to sell all the municipal leases immediately at a substantial discount from book value. Under the Plan, the Receiver may direct applicant to take such actions as he may deem necessary to expedient to wind up applicant's business and affairs. Moreover, the Receiver may modify, amend, or abandon the Plan without shareholder approval if he determines that such action is in the best interests of the shareholders.

5. As of August 30, 1991, applicant had total net assets of $8,196,690, comprising 1,707,480 shares outstanding at a net asset value of $4.80 share. On April 12, 1991 and August 5, 1991, applicant distributed to its shareholders $1.00 per share on each occasion.

6. After the initial liquidating cash distributions described above, as of August 30, 1991, the Receiver caused applicant to transfer all its assets and liabilities to a liquidating trust established pursuant to the Plan for the benefit of applicant's shareholders (the "Liquidating Trust"). The assets primarily were municipal leases and portfolio securities. Applicant expects that the Liquidating Trust will effect an orderly liquidation of the assets over a period not expected to exceed approximately 2½ years. The Liquidating Trust will terminate following the first to occur of (i) the complete distribution of the Liquidating Trust's assets, or (ii) the expiration of three years from the date that the Liquidating Trust was created. However, the Liquidating Trust may continue beyond such three year period for the limited purpose of distributing assets to missing beneficiaries, collecting any uncollected assets, or defending any known or unknown contingent claims, but in no event beyond twelve years from its creation.

7. As of December 3, 1991, applicant had 519 shareholders. Applicant is not engaged and does not propose to engage in any business activity other than those necessary for the winding up of its affairs.

8. From January 1, 1991 through August 30, 1991, liquidation expenses, including payments for services rendered, legal fees, and audit fees totalling approximately $187,718 were borne by applicant. Of this amount, $99,354 represented services rendered, including approximately $54,000 paid to the Receiver and $30,000 paid to certain personnel employed by applicant to assist in its operations and liquidation. The remainder represents other administrative costs, including expenditures for office rent, equipment, mailing, and telephone usage. The Receiver will pay future expenses from the assets of the Liquidating Trust.

9. Applicant has no debts or other liabilities remaining outstanding.

10. Applicant has filed a Notice of Intent to Dissolve with the State of Minnesota and intends to file a Certificate of Dissolution following applicant's deregistration.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-10880 Filed 5-8-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 92-5-5]

Fitness Determination of West Isle Air, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination; order to show cause.

SUMMARY: The Department of Transportation is proposing to find that West Isle Air, Inc., is fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., room 6401, Washington, DC 20590, and serve them on all persons listed in attachment A to the order. Responses shall be filed no later than May 15, 1992.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (P-56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2337.

Dated: May 4, 1992.

Patrick V. Murphy,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 92-10921 Filed 5-8-92; 8:45 am]

BILLING CODE 4910-62-M

Aviation Proceedings; Agreements filed during the Week Ended May 1, 1992

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: 48124

Date filed: April 27, 1992.

Parties: Members of the International Air Transport Association.

Subject: TC1 Reso/P 0386 dated April 3, 1992, TC1 Caribbean Resos—R-1 To R-16; TC1 Reso/P 0387 dated April 3, 1992, TC1 Within South America Reso—R-17 To R-27.

Proposed Effective Date: June 1, 1992.

Docket Number: 48125.

Date filed: April 27, 1992.

Parties: Members of the International Air Transport Association.

Subject: TC1 Reso/P 0385 dated April 3, 1992, TC1 Areawide Resos—R-1 To R-4; TC1 Reso/P 0388 dated April 3, 1992, TC1 Longhaul Resos—R-5 To R-51.

Proposed Effective Date: June 1, 1992.

Docket Number: 48128

Date filed: April 27, 1992.

Parties: Members of the International Air Transport Association.

Subject: TC3 Reso/P dated April 21, 1992, TC3 Resos—R-1 To R-3; TC31 Reso/P 0926 dated April 21, 1992, TC31 Reso 001p—R-4.

Proposed Effective Date: June 1, 1992.

Docket Number: 48129.

Date filed: April 29, 1992.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 564 (Egypt To Germany Cargo Rates) R-1-010ss R-2 552 r-3-590.

Proposed Effective Date: May 10, 1992.

Docket Number: 48133.

Date filed: May 1, 1992.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 547 (Japan-Taiwan Excursion & GIT Fares).

Proposed Effective Date: April 1, 1992.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-10917 Filed 5-8-92; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended May 1, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48126.

Dated filed: April 27, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 26, 1992.

Description: Application of Korean Air Lines Co., Ltd., pursuant to section 402 of the Act and subpart Q of the Regulation, applies for amendment to its foreign air carrier permit authorizes KAL to provide scheduled air service between the Republic of Korea and the coterminal points Honolulu, Hawaii and Los Angeles, California. It also authorizes KAL to provide charter service between the two countries subject to the terms, conditions and limitations prescribed by the Department's regulations governing charters.

Docket Number: 48131.

Dated filed: April 29, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 27, 1992.

Description: Application of Patriot Airlines, Inc., pursuant to section 401(d)(3) of the Act and subpart Q of the Regulations for issuance of a certificate of public convenience and necessity so as to authorize Patriot to provide nonscheduled foreign air transportation of property and mail between points in the United States and points in various foreign countries.

Docket Number: 44798.

Dated filed: April 30, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 28, 1992.

Description: Application of Delta Air Lines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, requests renewal of its certificate of public convenience and necessity to permit Delta to continue to provide scheduled air transportation of persons, property and mail between Los Angeles, California, on the one hand, and Mazatlan, Puerto Vallarta, and Ixtapa/Zihuatanejo, Mexico, on the other hand.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-10918 Filed 5-8-92; 8:45 am]

BILLING CODE 4910-62-M

[Order 92-5-4]

Fitness Determination of Air West Airlines, Inc.

AGENCY: Department of Transportation

ACTION: Notice of Commuter Air Carrier Fitness Determination; order to show cause.

SUMMARY: The Department of Transportation is proposing to find Air West Airlines, Inc., fit, willing, and able

to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than May 20, 1992.

FOR FURTHER INFORMATION CONTACT: Carol Woods, Air Carrier Fitness Division (P-56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2340.

Dated: May 4, 1992.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR. Doc. 92-10916 Filed 5-8-92; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Transition From the North American Datum of 1927 (NAD 27) to the North American Datum of 1983 (NAD 83)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Coast and Geodetic Survey, National Geodetic Survey Division, has refined and adjusted the latitude and longitude coordinates for the United States creating the more precise NAD 83. Through this action, the Federal Aviation Administration will convert all latitude and longitude coordinates used in the National Airspace System to NAD 83 on October 15, 1992. This activity is directed to be completed by Section 9120 of the "Aviation Safety and Capacity Expansion Act of 1990" for the purpose of maintaining accuracy and consistency with new navigation systems, other federal agencies and foreign governments. Until the conversion date, however, the FAA will continue to use and accept only positional data referenced to NAD 27. Data referenced to NAD 27 and NAD 83 are not interchangeable.

EFFECTIVE DATE: October 15, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Richard V. Powell, ATP-220, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9244.

SUPPLEMENTARY INFORMATION: On June 29, 1979, the National Oceanic and Atmospheric Administration published an official notification of the establishment of a new Datum (NAD 83) to which the geographic and plane coordinate values for the National Network of Horizontal Geodetic Control would be referenced (44 FR 37969 (1979)). On June 14, 1989, the National Oceanic and Atmospheric Administration published notice of the interagency Federal Geodetic Control Committee's affirmation of NAD 83 as the official civilian horizontal datum for U.S. surveying and mapping activities performed or financed by the Federal Government (54 FR 25318 (1989)). Furthermore, it directed to the extent practicable, legally allowable and feasible, all Federal agencies using or producing coordinate information to provide for an orderly transition from NAD 27 to NAD 83. This action should provide for such an orderly transition by the FAA.

Issued in Washington, DC, on May 1, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc 92-10923 Filed 5-8-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Amended Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer matching program matching Department of Labor (DOL) records of Black Lung benefit recipients with VA pension and parents' dependency and indemnity compensation records.

The goal of this match is to identify VA benefit recipients who are also receiving Black Lung benefits payments reportable to VA as countable income.

The Department of Veterans Affairs (VA) plans to match records of veterans and surviving spouses and children who receive pension and parents who receive dependency and indemnity compensation (DIC) from VA with records of Black Lung benefit recipients maintained by the Department of Labor (DOL). The match with DOL will provide VA with data from the DOL Black Lung Automated Support Package. Va will use the data to update the master records of VA beneficiaries receiving income dependent benefits and to adjust VA benefit payments as prescribed by law. Currently, information about a VA beneficiary's receipt of Black Lung benefits is obtained from reporting by the beneficiary. The proposed matching programs will enable VA to ensure accurate reporting of DOL Black Lung benefits.

Records to be Matched: DOL as "source agency" will provide Black Lung benefit payment information from the systems of records designated as Office of Workers' Compensation Program, Black Lung Benefit Payments Automated Support Package (55 FR 7131, February 28, 1990), matched against the VA system of records, Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22) contained in the Privacy Act Issuances, 1989 compilation, Volume II, pages 918-922 as amended. In accordance with Title 5 U.S.C. subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget.

This notice is provided in accordance with the provisions of the Privacy Act of 1974 as amended by Public Law 100-503.

The match is estimated to start April 1, 1992, but will start no sooner than 30 days after publication of this Notice in the **Federal Register** (June 10, 1992), or 30 days after copies of this Notice and the agreement of the parties is submitted to Congress and the Office of Management and Budget, whichever is later, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs, within three months of the ending date of the original match, that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESSES: Interested individuals may comment on the proposed matches by writing to the Director, Compensation and Pension Service (21), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: David G. Spivey (213B), (202) 233-3504.

SUPPLEMENTARY INFORMATION: This information is required by Title 5 U.S.C. subsection 552a(e)(12), the Privacy Act

of 1974. A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Approved: May 1, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 92-10870 Filed 5-8-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 91
Monday, May 11, 1992

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).

DEPARTMENT OF AGRICULTURE

RURAL TELEPHONE BANK, USDA

ACTION: Staff Briefing for the Board of Directors.

TIME AND DATE: 3:00 p.m., Monday, May 18, 1992.

PLACE: Room 0204–South Building, U.S. Department of Agriculture, 14th and Independence Ave., SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: A representative from the Office of Management and Budget will discuss the Federal Credit Reform Act and its impact on the Rural Telephone Bank's operations.

ACTION: Regular Meeting of the Board of Directors.

TIME AND DATE: 9:15 a.m., Tuesday, May 19, 1992.

PLACE: Training Room, U.S. Department of Agriculture, Auditors Building, 2nd Floor, Southeast Wing, 14th and Independence Ave., SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Board of Directors meeting:

1. Call to Order.
2. Approval of Minutes of the February 25, 1992, RTB Board meeting.
3. Report on Loans Approved in the Second Quarter of FY 1992.
4. Review of Financial Statements for the Second Quarter of FY 1992.
5. Election of Board Officers: Chairperson, Vice Chairperson, Secretary, and Treasurer.
6. Resolution to Appoint a new Assistant Secretary.
7. Resolution to Continue the Privatization Committee.
8. Approval of the 20th Annual Report of the Board of Directors, FY 1991.
9. Prepayment Premiums:
   a. Report on Requests for Waiver of Prepayment Premium.
   b. Regulations For Prepayment Premiums.
10. Lien Accommodations and Investment Requirements for Rural Development Projects.
11. Privatization Committee Report.
12. General Discussion of Federal Credit Reform Act.
13. Schedule Date for February 1993 Board Meeting.
14. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Blaine D. Stockton, Jr., Assistant Secretary, Rural Telephone Bank (202) 720–9552.

Michael M.F. Liu,

Acting Governor, Rural Telephone Bank.

[FR Doc. 92–11024 Filed 5–6–92; 4:47 pm]

BILLING CODE 3410–15–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Meeting of the Board of Directors

TIME AND DATE: 10:00 a.m., Thursday, May 21, 1992.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, N.W., 8th Floor Board Room, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary, (202) 376–2441.

AGENDA:

I. Call to Order
II. Approval of Minutes, February 13, 1992, Regular Meeting
III. Resolution of Appreciation
IV. Election of Vice Chairman
V. Committee Appointments:
   a. Audit Committee
   b. Budget Committee
   c. Personnel Committee
VI. Election of Officers
VII. Board Appointments
VIII. Executive Director's Quarterly Management Report
IX. Treasurer's Report
X. Adjourn

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 92–11058 Filed 5–7–92; 11:35 am]

BILLING CODE 7570–01–M

SECURITIES AND EXCHANGE COMMISSION

AGENCY MEETING

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [57 FR 19331 May 5, 1992].

STATUS: Closed meeting.

PLACE: 450 Fifth Street NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Thursday, April 30, 1992.

CHANGE IN THE MEETING: Rescheduling.

A closed meeting scheduled for Thursday, May 7, 1992, at 2:30 P.M. has been rescheduled for Monday, May 11, 1992, at 10:00 a.m.

Commissioner Beese, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Holly Smith at (202) 272–2100.

Dated: May, 6, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–11139 Filed 5–7–92; 3:51 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 57, No. 91
Monday, May 11, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-3428; FR-3204-N-01]

NOFA for Technical Assistance to Community Housing Development Organizations (CHDOs)

Correction

In notice document 92-10212 beginning on page 19044 in the issue of Friday, May 1, 1992, on pages 19045 and 19046, *D. Eligible Activity Areas and Priorities* is corrected to read as follows:

"D. Eligible Activity Areas and Priorities

(1) *Activity Areas.* As identified in section 233 of the Act, and contained in § 92.302(c) of the Interim Rule, the eligible activity areas to achieve the stated objectives are:

(a) *Organizational Support.* Assistance may be made available to CHDOs to cover:

(i) The organization's operational expenses, such as personnel and office equipment;

(ii) Expenses for organizational/development training for the Board of Directors, staff and members of the organization; and

(iii) Technical and legal assistance to the organization's staff to develop and complete affordable housing projects;

(b) *Housing Education.* Housing education assistance may be made available to CHDOs to cover expenses for providing or administering programs for:

(i) Educating and counseling homeowners and/or tenants about homeownership, establishing credit and managing debt, and tenant assistance and related programs; and

(ii) Organizing homeowners and tenants to develop cooperatives, condominium, tenant and other associations in conjunction with the receipt of assistance through the HOME program;

Note: If an organization chooses to pass through funds to a CHDO for activity areas (a) and (b), the CHDO may not receive assistance for these activities for any fiscal year in an amount that, together with other federal assistance, provides more than 50 percent of the CHDO's total operating budget in the fiscal year.

(c) *Program-wide Support for Nonprofit Management and Development.* Property management technical assistance and training may be made available to eligible CHDOs for managing properties developed through the HOME program. In addition, continuing support may be available to enable CHDOs to preserve and perpetuate the affordability of properties developed through the HOME program;

(d) *Benevolent Loan Funds.* Technical assistance may be made available to assist CHDOs in:

(i) Developing an understanding of the use of benevolent loan funds to promote and develop affordable housing in their communities; and

(ii) Forming partnerships with their local private financial institutions to use benevolent loan funds (the acceptance of deposits at below-market interest rates and the lending of such funds at favorable rates to nonprofit developers of low-income housing and to low-income homebuyers); and

(e) *Community Development Banks and Credit Unions.* HUD recognizes community development banks and credit unions as viable community-based lending institutions to finance the development of affordable housing. Therefore, technical assistance may be made available to assist CHDOs in establishing privately owned, local community development banks and credit unions that will include among their lending activities the financing of affordable housing in low-income neighborhoods.

(2) *Activity Priorities.* Because areas of the country are underserved by CHDOs (CHDOs are newly formed and therefore, lack experience and capacity), HUD will use the funds under this NOFA to conduct a demonstration program to provide pass-through funds to these organizations for capacity building and operational development, as identified in activity area (a) in paragraph (1) of this section. The focus of the demonstration is on rural areas, areas where there are large concentrations of racial or ethnic minorities, and the Southwestern portion of the country.

Although all five activity areas are eligible for funding under this NOFA, HUD will place priority on funding technical assistance activities (a), (b), (c), listed in paragraph (1) of this section. HUD will direct the technical assistance efforts to CHDOs in these activity areas through three vehicles:

(a) *A Nationwide Clearinghouse.* A nationwide clearinghouse will be established (and funded under a separate contract, not as part of this NOFA). The clearinghouse will assist nonporfit and for-profit housing organizations, as well as CHDOs and participating jurisdictions, in the implementation of the HOME Program, expenditure of HOME funds and other affordable housing programs. The clearinghouse will:

(i) Disseminate HUD affordable housing program information, such as legislative updates, HUD Notices, sample model programs, relevant news/magazine articles and research data;

(ii) Provide an array of housing topic information, such as underwriting, property management and project development;

(iii) Announce training and seminar opportunities; and

(iv) Provide sample documentation that can be used in the development of programs or for specific types of projects.

(b) *Specialized Training.* HUD will not fund proposals submitted in response to the RFCAA for training on housing-related topics that CHDOs can obtain through existing training courses (HUD is already providing training to nonprofit organizations and participating jurisdictions on the basic elements of the HOME program). Specialized training under this NOFA will be provided through the demand/response system as described in the following section I.E of this NOFA. Training delivered by nonprofit intermediary organizations must:

(i) Address the specific technical assistance needs of the CHDO; and/or

(ii) Provide information on highly specialized housing topics that is not available on a nationwide basis, such as

land trusts and low-income equity cooperatives.

(c) *Direct Technical Assistance.* Historically, CHDOs have demonstrated varying degrees of success in securing the necessary capital resources and packaging housing development projects. The complexity of the developmental process and the financial requirements of the capital resources often require CHDOs to obtain outside direct technical and professional assistance and expertise. In order to meet the CHDOs' needs, a demand/response system will be implemented to provide the necessary housing development assistance."

BILLING CODE 1505-01-D

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 502

Definitions Under the Indian Gaming Regulatory Act

Correction

In rule document 92-8117 beginning on page 12382 in the issue of Thursday, April 9, 1992, in the first column, the **EFFECTIVE DATE** should read "May 11, 1992".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO-111-90]
RIN 1545-AQ05

Revision of Section 338 Consistency Rules; Hearing

Correction

In proposed rule document 92-718 beginning on page 1408 in the issue of Tuesday, January 14, 1992, make the following corrections:

1. On page 1409, in the second column, in the fifth full paragraph, in the third line, "(f)(4)" should read "(e)(4)".

2. On the same page, in the third column, in the next to last paragraph, in the eighth line, "after "generally" insert "may".

3. On page 1410, in the third column, in the fourth line, "rules" should read "rule".

§ 1.338-0 [Corrected]

4. On page 1414, in the third column, in § 1.338-0, in the table of contents entry for (g) of *§ 1.338-1*, in the second line,"of" should read "for".

§ 1.338-1 [Corrected]

5. On page 1417, in § 1.338-1(c)(7), in the last line "sections" should read "section"; and in paragraph (c)(8), in the first line, after "The" insert "term".

6. On page 1419, in the first column, in § 1.338-1(f)(2)(ii), in the sixth line, "cooperation" should read "corporation".

7. On the same page, in the second column, in § 1.338-1(f)(4), *Example 3.*, in the fourth line, "of" should read "old".

§ 1.338-2 [Corrected]

8. On page 1421, in the third column, in § 1.338-2(b)(5)(iv), Examples 1 and 2, in the first line "*OSP*" should read "*QSP*".

9. On page 1423, in the first column, in § 1.338-2(d)(8)(ii), in the second line, "§ 1.411" should read "§ 1.441".

§ 1.338-3 [Corrected]

10. On page 1423, in the second column, in § 1.338-3(c)(6), in the second line, "less" should read "loss".

11. On page 1424, in the first column, in § 1.338-3(c)(8), *Example 4*(b), in the second line, "election" was misspelled; in the seventh line, "FT" should read "FT2".

12. On the same page, in the same column, in § 1.338-3(c)(8), in *Example 4*(c), in the fifth line from the bottom, "and" was misspelled.

13. On the same page, in the second column, in § 1.338-3(d)(2)(ii), in the sixth line, "be" should read "the"; in the fourth line from the bottom, "stock stock" should read "such stock".

14. On the same page, in the same column, in § 1.338-3(d)(2)(iii), in the fifth line, "of" should read "on".

15. On page 1425, in the first column, in § 1.338-3(d)(5)(iii), *Example 3*(a) in the table, in the fourth column, the first entry should read ".14".

16. On page 1426, in the first column, in § 1.338-3(d)(5)(iii),*Example 7*(d), in the formulae, in the fifth entry, the first "=" should read "-".

17. On the same page, in the same column, in § 1.338-3(d)(5)(iii), *Example 8*(a), in the table, the fourth column heading "FM" should read "FMV".

18. On the same page, in the second column, in § 1.338-3(d)(5)(iii), *Example 9*(b), in the formulae, in the first and second lines, the entry after the second "×" should read: "$(F_1+F_3+F_4)$".,

§ 1.338-4 [Corrected]

19. On page 1427, in the second column, in § 1.338-4(b)(2)(i) in the third line the section reference should read "§ 1.388(h)(10)-1)".

20. On page 1428, in the first column, in § 1.338-4(e)(2), *Example 2*, in the fourth line, "and" should read "from".

21. On the same page, in the second column, in § 1.338-4(e)(2), *Example 3*(b), in the fourth line, after "that" insert "acquired T stock in the qualified stock purchase. However, the asset is owned by a"

22. On the same page, in the same column, in § 1.338-4(e)(2), *Example 4*(b), in the last line, "pain" should read "gain".

23. On the same page, in the third column, in § 1.338-4(e)(2), *Example 6*(c), in the second line, "and" should read "from".

24. On page 1429, in the third column, in § 1.338-4(f)(4), Example 3(b), in the sixth line from the bottom, "of" should read "if".

25. On page 1431, in the first column, in § 1.338-4(h)(2)(ii) in the third line, the paragraph designation should read "(h)(2)(i)".,

§ 1.338(b)-1 [Corrected]

26. On page 1435, in the first column, in § 1.338(b)-1(c)(3)(i), in the third line, the formulae should read, "AGUB=GRP+BNP+L+X"

27. On page 1436, in the third column, in § 1.338(b)-1(h)(2), *Example 1*(g), in the fourth line, the third "1" should read ".1".

§ 1.338(h)(10)-1 [Corrected]

28. On page 1438, in the second column, in § 1.338(h)(10)-1(g), *Example 3*(a), in the second line, "$" should read "S".

BILLING CODE 1505-01-D

federal register

Monday
May 11, 1992

Part II

United States Sentencing Commission

Amendments to the Sentencing Guidelines for United States Courts; Notice

UNITED STATES SENTENCING COMMISSION

Amendments to the Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of submission of amendments to the sentencing guidelines to Congress.

SUMMARY: Pursuant to its authority under section 994(p) of title 28, United States Code, the Commission on April 30, 1992, submitted to the Congress for review a report containing a number of amendments to the sentencing guidelines, policy statements, and official commentary, together with reasons for the amendments.

DATES: Pursuant to 28 U.S.C. 994(p), as amended by section 7109 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690, Nov. 18, 1988), the Commission has specified an effective date of November 1, 1992, for these amendments. Comments regarding amendments that the Commission should specify for retroactive application to previously sentenced defendants should be received no later than July 31, 1992.

ADDRESSES: Comments should be sent to: United States Sentencing Commission, 1331 Pennsylvania Avenue NW., suite 1400, Washington, DC 20004, Attn: Public Information Office.

FOR FURTHER INFORMATION CONTACT: Mike Courlander, Public Information Specialist, Telephone: (202) 626–8500.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the U.S. Government. The Commission is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to periodically review and revise guidelines previously promulgated and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. 994(o), (p). Absent action of Congress to the contrary, the amendments become effective on the date specified by the Commission (i.e., November 1, 1992) by operation of law.

Notice of the amendments submitted to the Congress on April 30, 1992, was published in the **Federal Registers** of January 2, 1992 (57 FR 90) and January 22, 1992 (57 FR 2635). A public hearing on the proposed amendments was held in Washington, DC, on February 25, 1992. After review of the hearing testimony and additional public comment, the Commission promulgated the amendments, each amendment having been approved by at least four voting Commissioners. In connection with its ongoing process of guideline review, the Commission welcomes comment on any aspect of the sentencing guidelines, policy statements, and official commentary. Specifically, the Commission solicits comment on which, if any, of the amendments submitted to the Congress that may result in a lower guideline range should be made retroactive to previously sentenced defendants under Policy Statement 1B1.10.

Authority: 28 U.S.C. 994 (a), (o), (p); sec. 7109 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690).

William W. Wilkins, Jr.,

Chairman.

Amendments to the Sentencing Guidelines

Pursuant to section 994(p) of title 28, United States Code, as amended by Section 7109 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690, Nov. 18, 1988), the United States Sentencing Commission reports to the Congress the following amendments to the sentencing guidelines, and the reasons therefor. As authorized by this section, the Commission specifies an effective date of November 1, 1992, for these amendments.

Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary

1. Amendment: Section 1B1.2(a) is amended by deleting "conviction by a plea of guilty or nolo contendere" and inserting in lieu thereof "a plea agreement (written or made orally on the record)".

Section 1B1.2(c) is amended by deleting "conviction by a plea of guilty or nolo contendere" and inserting in lieu thereof "plea agreement (written or made orally on the record)".

Reason for Amendment: This amendment revises the language of this guideline to clarify the meaning of the term "stipulation," complementing an amendment to the commentary of this guideline effective November 1, 1991 (see Guidelines Manual, appendix C, amendment 434).

* * * * *

2. Amendment: Section 1B1.3(a)(1) is amended by deleting "all acts and omissions committed or aided and abetted by the defendant, or for which the defendant would be otherwise accountable, that occurred during the", and inserting in lieu thereof:

(A) all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant; and

(B) in the case of a jointly undertaken criminal activity (a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy), all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity,

that occurred during the;

and by deleting ", or that otherwise were in furtherance of that offense".

Section 1B1.3(a)(2) is amended by deleting "such acts and omissions" and inserting in lieu thereof "acts and omissions described in subdivisions (1)(A) and (1)(B) above".

Section 1B1.3(a)(3) is amended by deleting "or" in each instance and inserting in lieu thereof "and".

The Commentary to § 1B1.3 captioned "Application Notes" is amended by renumbering Notes 2–7 as 3–8, respectively; and by deleting Note 1 and inserting in lieu thereof:

1. The principles and limits of sentencing accountability under this guideline are not always the same as the principles and limits of criminal liability. Under subsections (a)(1) and (a)(2), the focus is on the specific acts and omissions for which the defendant is to be held accountable in determining the applicable guideline range, rather than on whether the defendant is criminally liable for an offense as a principal, accomplice, or conspirator.

2. A 'jointly undertaken criminal activity' is a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy.

In the case of a jointly undertaken criminal activity, subsection (a)(1)(B) provides that a defendant is accountable for the conduct (acts and omissions) of others that was both:

(i) in furtherance of the jointly undertaken criminal activity; and

(ii) reasonably foreseeable in connection with that criminal activity.

Because a count may be worded broadly and include the conduct of many participants over a period of time, the scope of the criminal activity jointly undertaken by the defendant (the 'jointly undertaken criminal activity') is not necessarily the same as the scope of the entire conspiracy, and hence relevant conduct is not necessarily the same for every participant. In order to determine the defendant's accountability for the conduct of others under subsection (a)(1)(B), the court must first determine the scope of the criminal activity the particular defendant agreed to jointly undertake (i.e., the scope of the specific conduct and objectives embraced by the defendant's agreement). The conduct of others that was both in furtherance of, and reasonably foreseeable in connection with, the criminal activity jointly undertaken by the defendant is relevant conduct under this provision. The conduct of others that was not

in furtherance of the criminal activity jointly undertaken by the defendant, or was not reasonably foreseeable in connection with that criminal activity, is not relevant conduct under this provision.

In determining the scope of the criminal activity that the particular defendant agreed to jointly undertake (i.e., the scope of the specific conduct and objectives embraced by the defendant's agreement), the court may consider any explicit agreement or implicit agreement fairly inferred from the conduct of the defendant and others.

Note that the criminal activity that the defendant agreed to jointly undertake, and the reasonably foreseeable conduct of others in furtherance of that criminal activity, are not necessarily identical. For example, two defendants agree to commit a robbery and, during the course of that robbery, the first defendant assaults and injures a victim. The second defendant is accountable for the assault and injury to the victim (even if the second defendant had not agreed to the assault and had cautioned the first defendant to be careful not to hurt anyone) because the assaultive conduct was in furtherance of the jointly undertaken criminal activity (the robbery) and was reasonably foreseeable in connection with that criminal activity (given the nature of the offense).

With respect to offenses involving contraband (including controlled substances), the defendant is accountable for all quantities of contraband with which he was directly involved and, in the case of a jointly undertaken criminal activity, all reasonably foreseeable quantities of contraband that were within the scope of the criminal activity that he jointly undertook.

The requirement of reasonable foreseeability applies only in respect to the conduct (i.e., acts and omissions) of others under subsection (a)(1)(B). It does not apply to conduct that the defendant personally undertakes, aids, abets, counsels, commands, induces, procures, or willfully causes; such conduct is addressed under subsection (a)(1)(A).

In the case of solicitation, misprision, or accessory after the fact, the conduct for which the defendant is accountable includes all conduct relevant to determining the offense level for the underlying offense that was known, or reasonably should have been known, by the defendant.

Illustrations of Conduct for Which the Defendant is Accountable

a. Acts and omissions aided or abetted by the defendant.

1. Defendant A is one of ten persons hired by Defendant B to off-load a ship containing marihuana. The off-loading of the ship is interrupted by law enforcement officers and one ton of marihuana is seized (the amount on the ship as well as the amount off-loaded). Defendant A and the other off-loaders are arrested and convicted of importation of marihuana. Regardless of the number of bales he personally unloaded, Defendant A is accountable for the entire one-ton quantity of marihuana. Defendant A aided and abetted the off-loading of the entire shipment of marihuana by directly participating in the off-loading of that shipment (i.e., the specific objective of the criminal activity he joined was the off-loading of the entire shipment).

Therefore, he is accountable for the entire shipment under subsection (a)(1)(A) without regard to the issue of reasonable foreseeability. This is conceptually similar to the case of a defendant who transports a suitcase knowing that it contains a controlled substance and, therefore, is accountable for the controlled substance in the suitcase regardless of his knowledge or lack of knowledge of the actual type or amount of that controlled substance.

In certain cases, a defendant may be accountable for particular conduct under more than one subsection of this guideline. As noted in the preceding paragraph, Defendant A is accountable for the entire one-ton shipment of marihuana under subsection (a)(1)(A). Defendant A also is accountable for the entire one-ton shipment of marihuana on the basis of subsection (a)(1)(B) (applying to a jointly undertaken criminal activity). Defendant A engaged in a jointly undertaken criminal activity (the scope of which was the importation of the shipment of marihuana). A finding that the one-ton quantity of marihuana was reasonably foreseeable is warranted from the nature of the undertaking itself (the importation of marihuana by ship typically involves very large quantities of marihuana). The specific circumstances of the case (the defendant was one of ten persons off-loading the marihuana in bales) also support this finding. In an actual case, of course, if a defendant's accountability for particular conduct is established under one provision of this guideline, it is not necessary to review alternative provisions under which such accountability might be established.

b. Acts and omissions aided or abetted by the defendant; requirement that the conduct of others be in furtherance of the jointly undertaken criminal activity and reasonably foreseeable.

1. Defendant C is the getaway driver in an armed bank robbery in which $15,000 is taken and a teller is assaulted and injured. Defendant C is accountable for the money taken under subsection (a)(1)(A) because he aided and abetted the act of taking the money (the taking of money was the specific objective of the offense he joined).

Defendant C is accountable for the injury to the teller under subsection (a)(1)(B) because the assault on the teller was in furtherance of the jointly undertaken criminal activity (the robbery) and was reasonably foreseeable in connection with that criminal activity (given the nature of the offense).

As noted earlier, a defendant may be accountable for particular conduct under more than one subsection. In this example, Defendant C also is accountable for the money taken on the basis of subsection (a)(1)(B) because the taking of money was in furtherance of the jointly undertaken criminal activity (the robbery) and was reasonably foreseeable (as noted, the taking of money was the specific objective of the jointly undertaken criminal activity).

c. Requirement that the conduct of others be in furtherance of the jointly undertaken criminal activity and reasonably foreseeable; scope of the criminal activity.

1. Defendant D pays Defendant E a small amount to forge an endorsement on an $800 stolen government check. Unknown to Defendant E, Defendant D then uses that check as a down payment in a scheme to fraudulently obtain $15,000 worth of merchandise. Defendant E is convicted of forging the $800 check and is accountable for the forgery of this check under subsection (a)(1)(A). Defendant E is not accountable for the $15,000 because the fraudulent scheme to obtain $15,000 was not in furtherance of the criminal activity he jointly undertook with Defendant D (i.e., the forgery of the $800 check).

2. Defendants F and G, working together, design and execute a scheme to sell fraudulent stocks by telephone. Defendant F fraudulently obtains $20,000. Defendant G fraudulently obtains $35,000. Each is convicted of mail fraud. Defendants F and G each are accountable for the entire amount ($55,000). Each defendant is accountable for the amount he personally obtained under subsection (a)(1)(A). Each defendant is accountable for the amount obtained by his accomplice under subsection (a)(1)(B) because the conduct of each was in furtherance of the jointly undertaken criminal activity and was reasonably foreseeable in connection with that criminal activity.

3. Defendants H and I engaged in an ongoing marihuana importation conspiracy in which Defendant J was hired only to help off-load a single shipment. Defendants H, I, and J are included in a single count charging conspiracy to import marihuana. Defendant J is accountable for the entire single shipment of marihuana he helped import under subsection (a)(1)(A) and any acts and omissions in furtherance of the importation of that shipment that were reasonably foreseeable (see the discussion in example a.1 above). He is not accountable for prior or subsequent shipments of marihuana imported by Defendants H or I because those acts were not in furtherance of his jointly undertaken criminal activity (the importation of the single shipment of marihuana).

4. Defendant K is a wholesale distributor of child pornography. Defendant L is a retail-level dealer who purchases child pornography from Defendant K and resells it, but otherwise operates independently of Defendant K. Similarly, Defendant M is a retail-level dealer who purchases child pornography from Defendant K and resells it, but otherwise operates independently of Defendant K. Defendants L and M are aware of each other's criminal activity but operate independently. Defendant N is Defendant K's assistant who recruits customers for Defendant K and frequently supervises the deliveries to Defendant K's customers. Each defendant is convicted of a count charging conspiracy to distribute child pornography. Defendant K is accountable under subsection (a)(1)(A) for the entire quantity of child pornography sold to Defendants L and M. Defendant N also is accountable for the entire quantity sold to those defendants under subsection (a)(1)(B) because the entire quantity was within the scope of his jointly undertaken criminal activity and reasonably foreseeable. Defendant L is accountable

under subsection (a)(1)(A) only for the quantity of child pornography that he purchased from Defendant K because the scope of his jointly undertaken criminal activity is limited to that amount. For the same reason, Defendant M is accountable under subsection (a)(1)(A) only for the quantity of child pornography that he purchased from Defendant K.

5. Defendant O knows about her boyfriend's ongoing drug-trafficking activity, but agrees to participate on only one occasion by making a delivery for him at his request when he was ill. Defendant O is accountable under subsection (a)(1)(A) for the drug quantity involved on that one occasion. Defendant O is not accountable for the other drug sales made by her boyfriend because those sales were not in furtherance of her jointly undertaken criminal activity (i.e., the one delivery).

6. Defendant P is a street-level drug dealer who knows of other street-level drug dealers in the same geographic area who sell the same type of drug as he sells. Defendant P and the other dealers share a common source of supply, but otherwise operate independently. Defendant P is not accountable for the quantities of drugs sold by the other street-level drug dealers because he is not engaged in a jointly undertaken criminal activity with them. In contrast, Defendant Q, another street-level drug dealer, pools his resources and profits with four other street-level drug dealers. Defendant Q is engaged in a jointly undertaken criminal activity and, therefore, he is accountable under subsection (a)(1)(B) for the quantities of drugs sold by the four other dealers during the course of his joint undertaking with them because those sales were in furtherance of the jointly undertaken criminal activity and reasonably foreseeable in connection with that criminal activity.

7. Defendant R recruits Defendant S to distribute 500 grams of cocaine. Defendant S knows that Defendant R is the prime figure in a conspiracy involved in importing much larger quantities of cocaine. As long as Defendant S's agreement and conduct is limited to the distribution of the 500 grams, Defendant S is accountable only for that 500 gram amount (under subsection (a)(1)(A)), rather than the much larger quantity imported by Defendant R.

8. Defendants T, U, V, and W are hired by a supplier to backpack a quantity of marihuana across the border from Mexico into the United States. Defendants T, U, V, and W receive their individual shipments from the supplier at the same time and coordinate their importation efforts by walking across the border together for mutual assistance and protection. Each defendant is accountable for the aggregate quantity of marihuana transported by the four defendants. The four defendants engaged in a jointly undertaken criminal activity, the object of which was the importation of the four backpacks containing marihuana (subsection (a)(1)(B)), and aided and abetted each other's actions (subsection (a)(1)(A)) in carrying out the jointly undertaken criminal activity. In contrast, if Defendants T, U, V, and W were hired individually, transported their individual shipments at different times, and otherwise operated independently, each defendant would be accountable only for the quantity of marihuana he personally transported (subsection (a)(1)(A)). As this example illustrates, in cases involving contraband (including controlled substances), the scope of the jointly undertaken criminal activity (and thus the accountability of the defendant for the contraband that was the object of that jointly undertaken activity) may depend upon whether, in the particular circumstances, the nature of the offense is more appropriately viewed as one jointly undertaken criminal activity or as a number of separate criminal activities.

The Commentary to § 1B1.3 captioned "Application Notes" is amended in Note 3 (formerly 2) by deleting the first sentence.

The Commentary to § 1B1.3 captioned "Application Notes" is amended by inserting the following additional note:

9. 'Common scheme or plan' and 'same course of conduct' are two closely-related concepts.

(A) Common scheme or plan. For two or more offenses to constitute part of a common scheme or plan, they must be substantially connected to each other by at least one common factor, such as common victims, common accomplices, common purpose, or similar modus operandi. For example, the conduct of five defendants who together defrauded a group of investors by computer manipulations that unlawfully transferred funds over an eighteen-month period would qualify as a common scheme or plan on the basis of any of the above listed factors; i.e., the commonality of victims (the same investors were defrauded on an ongoing basis), commonality of offenders (the conduct constituted an ongoing conspiracy), commonality of purpose (to defraud the group of investors), or similarity of modus operandi (the same or similar computer manipulations were used to execute the scheme).

(B) Same course of conduct. Offenses that do not qualify as part of a common scheme or plan may nonetheless qualify as part of the same course of conduct if they are sufficiently connected or related to each other as to warrant the conclusion that they are part of a single episode, spree, or ongoing series of offenses. Factors that are appropriate to the determination of whether offenses are sufficiently connected or related to each other to be considered as part of the same course of conduct include the degree of similarity of the offenses and the time interval between the offenses. The nature of the offenses may also be a relevant consideration (e.g., a defendant's failure to file tax returns in three consecutive years appropriately would be considered as part of the same course of conduct because such returns are only required at yearly intervals).

Reason for Amendment: This amendment clarifies and more fully illustrates the operation of this guideline. Material is moved from the commentary to the guideline itself and rephrased for greater clarity; the discussion of the application of this provision in the commentary is expanded; and additional examples are inserted. In addition, this amendment provides definitions of the terms "same course of conduct" and "common scheme or plan."

* * * * *

3. Amendment: Section 1B1.5 is amended by deleting:

Unless otherwise expressly indicated, a reference to another guideline, or an instruction to apply another guideline, refers to the entire guideline, i.e., the base offense level plus all applicable specific offense characteristics and cross references.

and inserting in lieu thereof:

(a) A cross reference (an instruction to apply another offense guideline) refers to the entire offense guideline (i.e., the base offense level, specific offense characteristics, cross references, and special instructions).

(b) (1) An instruction to use the offense level from another offense guideline refers to the offense level from the entire offense guideline (i.e., the base offense level, specific offense characteristics, cross references, and special instructions), except as provided in subdivision (2) below.

(2) An instruction to use a particular subsection or table from another offense guideline refers only to the particular subsection or table referenced, and not to the entire offense guideline.

(c) If the offense level is determined by a reference to another guideline under subsection (a) or (b)(1) above, the adjustments in Chapter Three (Adjustments) also are determined in respect to the referenced offense guideline, except as otherwise expressly provided.

(d) A reference to another guideline under subsection (a) or (b)(1) above may direct that it be applied only if it results in the greater offense level. In such case, the greater offense level means the greater final offense level (i.e., the greater offense level taking into account both the Chapter Two offense level and any applicable Chapter Three adjustments).".

The Commentary to § 1B1.5 captioned "Application Notes" is amended in Note 1 by deleting "are to be construed to incorporate the specific offense characteristics and cross references" and inserting in lieu thereof "incorporate the specific offense characteristics, cross references, and special instructions".

The Commentary to § 1B1.5 captioned "Application Notes" is amended by deleting Note 2 and renumbering the remaining notes accordingly.

Reason for Amendment: This amendment clarifies the operation of this guideline and moves an instruction currently contained in the commentary into the guideline itself.

* * * * *

4. Amendment: Section 1B1.8(b) is amended in subdivision (3) by deleting

"or" immediately following the semicolon; in subdivision (4) by deleting the period at the end and inserting in lieu thereof "; or"; and by inserting the following additional subdivision:

(5) in determining whether, or to what extent, a downward departure from the guidelines is warranted pursuant to a government motion under § 5K1.1 (Substantial Assistance to Authorities).

The Commentary to § 1B1.8 captioned "Application Notes" is amended in Note 1 by deleting the third sentence and inserting in lieu thereof:

Although the guideline itself affects only the determination of the guideline range, the policy of the Commission, as a corollary, is that information prohibited from being used to determine the applicable guideline range shall not be used to increase the defendant's sentence above the applicable guideline range by upward departure. In contrast, subsection (b)(5) provides that consideration of such information is appropriate in determining whether, and to what extent, a downward departure is warranted pursuant to a government motion under § 5K1.1 (Substantial Assistance to Authorities); e.g., a court may refuse to depart below the applicable guideline range on the basis of such information.

The Commentary to § 1B1.8 captioned "Application Notes" is amended in Note 3 in the second sentence by deleting "is governed by the provisions of Rule 11" and inserting in lieu thereof "in a sentencing proceeding is restricted by Rule 11(e)(6) (Inadmissibility of Pleas, Plea Discussions, and Related Statements)", and by inserting "(Inadmissibility of Pleas, Plea Discussions, and Related Statements)" immediately following "Rule 410".

The Commentary to § 1B1.8 captioned "Application Notes" is amended in Note 5 in the second sentence by deleting "repeats" and inserting in lieu thereof "provides".

Reason for Amendment: This amendment clarifies the operation of this guideline. Information protected by this guideline may not be used to determine the applicable guideline range. An upward departure on the basis of such information would be contrary to the Commission's policy (and, consequently, would be appealable as unreasonable). In contrast, the use of information covered by this guideline is appropriate in considering whether, and to what extent, a downward departure under § 5K1.1 (Substantial Assistance to Authorities) is appropriate. In addition, this amendment makes minor editorial improvements.

* * * * *

5. Amendment: Chapter One, Part B, is amended by inserting the following additional section:

§ 1B1.11. Use of Guidelines Manual in Effect on Date of Sentencing (Policy Statement)

(a) The court shall use the Guidelines Manual in effect on the date that the defendant is sentenced.

(b)(1) If the court determines that use of the Guidelines Manual in effect on the date that the defendant is sentenced would violate the ex post facto clause of the United States Constitution, the court shall use the Guidelines Manual in effect on the date that the offense was committed.

(2) The Guidelines Manual in effect on a particular date shall be applied in its entirety. The court shall not apply, for example, one guideline section from one edition of the Guidelines Manual and another guideline section from a different edition of the Guidelines Manual. However, if a court applies an earlier edition of the Guidelines Manual, the court shall consider subsequent amendments, to the extent that such amendments are clarifying rather than substantive changes.

Commentary

Application Note

1. Subsection (b)(2) provides that if an earlier edition of the Guidelines Manual is used, it is to be used in its entirety, except that subsequent clarifying amendments are to be considered.

Example: A defendant is convicted of an antitrust offense committed in November 1989. He is to be sentenced in December 1992. Effective November 1, 1991, the Commission raised the base offense level for antitrust offenses. Effective November 1, 1992, the Commission lowered the guideline range in the Sentencing Table for cases with an offense level of 8 and criminal history category of I from 2–8 months to 0–6 months. Under the 1992 edition of the Guidelines Manual (effective November 1, 1992), the defendant has a guideline range of 4–10 months (final offense level of 9, criminal history category of I). Under the 1989 edition of the Guidelines Manual (effective November 1, 1989), the defendant has a guideline range of 2–8 months (final offense level of 8, criminal history category of I). If the court determines that application of the 1992 edition of the Guidelines Manual would violate the ex post facto clause of the United States Constitution, it shall apply the 1989 edition of the Guidelines Manual in its entirety. It shall not apply, for example, the offense level of 8 and criminal history category of I from the 1989 edition of the Guidelines Manual in conjunction with the amended guideline range of 0–6 months for this offense level and criminal history category from the 1992 edition of the Guidelines Manual.

Background: Under 18 U.S.C. 3553, the court is to apply the guidelines in effect at the time of sentencing. Although aware of possible ex post facto clause challenges to application of the guidelines in effect at the time of sentencing, Congress did not believe that the ex post facto clause would apply to amended sentencing guidelines. S. Rep. No. 225, 98th Cong., 1st Sess. 77–78 (1983). While the Commission concurs in the policy expressed by Congress, courts to date generally have held that the ex post facto clause does apply to sentencing guideline amendments that subject the defendant to increased punishment.

Reason for Amendment: This amendment inserts a policy statement addressing the use of the Guidelines Manual when the Guidelines Manual has been amended between the date the offense was committed and the date of sentencing.

* * * * *

6. Amendment: Section 2A2.4(c)(1) is amended by deleting "defendant is convicted under 18 U.S.C. 111 and the" immediately before "conduct".

Section 2D1.1(b)(2) is amended by deleting "is convicted of violating 21 U.S.C. 960(a)" and inserting in lieu thereof "unlawfully imported or exported a controlled substance"; and by inserting "or export" immediately following "to import".

Section 2K1.5(b)(1) is amended by deleting "defendant is convicted under 49 U.S.C. 1472(l)(2) (i.e., the defendant acted willfully and without regard for the safety of human life, or with reckless disregard for the safety of human life)" and inserting in lieu thereof "offense was committed willfully and without regard for the safety of human life, or with reckless disregard for the safety of human life".

The Commentary to § 1B1.3 captioned "Application Notes" is amended in Note 6 (formerly Note 5) in the first paragraph by deleting "§ 2K1.5, subsection (b)(1) applies 'If the defendant is convicted under 49 U.S.C. 1472(l)(2).' " and inserting in lieu thereof "§ 2S1.1, subsection (a)(1) applies if the defendant 'is convicted under 18 U.S.C. 1956(a)(1)(A), (a)(2)(A), or (a)(3)(A).' "; and in the second paragraph by deleting "§ 2K1.5(b)(1)" and inserting in lieu thereof "§ 2S1.1(a)(1)", and by deleting "49 U.S.C. 1472(l)(2)" wherever it appears and inserting in lieu thereof in each instance "18 U.S.C. 1956(a)(1)(A), (a)(2)(A), or (a)(3)(A)".

The Commentary to § 2D1.1 captioned "Background" is amended in the fifth paragraph by deleting "mandated by" and inserting in lieu thereof "derived from".

Reason for Amendment: This amendment deletes the requirement of a conviction under a specific statute for these specific offense characteristics to apply and, consistent with the overall structure of the guidelines, provides for

their application on the basis of the underlying conduct.

* * * * *

7. Amendment: Section 2A3.1 is amended in the title by deleting "or Assault with the Intent" immediately following "Attempt".

Section 2A3.1(b)(3) is amended by inserting "(A)" immediately following "victim was"; and by deleting "was a corrections employee, or" and inserting in lieu thereof "or (B)".

Section 2A3.1 is amended by inserting the following additional subsection:

(c) Special Instruction

(1) If the offense occurred in a correctional facility and the victim was a corrections employee, the offense shall be deemed to have an official victim for purposes of subsection (a) of § 3A1.2 (Official Victim).

The Commentary to § 2A3.1 captioned "Application Notes" is amended by renumbering Note 3 as Note 4 and inserting the following additional note:

3. Subsection (b)(3), as it pertains to a victim in the custody, care, or supervisory control of the defendant, is intended to have broad application and is to be applied whenever the victim is entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this enhancement, the court should look to the actual relationship that existed between the defendant and the victim and not simply to the legal status of the defendant-victim relationship.

Section 2A3.2 is amended by inserting the following additional subsection:

(c) Cross Reference

(1) If the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse (as defined in 18 U.S.C. 2241 or 2242), apply § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

The Commentary to § 2A3.2 captioned "Application Notes" is amended by renumbering Note 2 as Note 3 and inserting the following as Note 2:

2. Subsection (b)(i) is intended to have broad application and includes offenses involving a minor entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this enhancement, the court should look to the actual relationship that existed between the defendant and the victim and not simply to the legal status of the defendant victim relationship.

Section 2A3.4 is amended by inserting the following additional subsection:

(c) Cross References

(1) If the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse (as defined in 18 U.S.C. 2241 or 2242), apply § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

(2) If the offense involved criminal sexual abuse of a minor or attempt to commit criminal sexual abuse of a minor (as defined in 18 U.S.C. 2243(a)), apply § 2A3.2 (Criminal Sexual Abuse of a Minor or Attempt to Commit Such Acts), if the resulting offense level is greater than that determined above.

The Commentary to § 2A3.4 captioned "Application Notes" is amended by renumbering Note 3 as Note 4 and inserting the following as Note 3:

3. Subsection (b)(3) is intended to have broad application and is to be applied whenever the victim is entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this enhancement, the court should look to the actual relationship that existed between the defendant and the victim and not simply to the legal status of the defendant-victim relationship.

Section 2G1.2(c)(2) is amended by deleting "or Assault with the Intent" immediately following "Attempt".

The Commentary to § 2X1.1 captioned "Application Notes" is amended in Note 1 in the second paragraph by deleting "or Assault with the Intent" immediately before "to Commit Criminal Sexual Abuse".

Reason for Amendment: This amendment cross references § 2A3.2 to § 2A3.1, and § 2A3.4 to §§ 2A3.1 and 2A3.2. A review of cases sentenced under these guidelines indicates that a significant proportion of cases sentenced under § 2A3.2 and § 2A3.4 clearly involved conduct that would more appropriately be covered under an offense guideline applicable to more serious sexual abuse cases. The addition of these cross references is designed to address this issue. In addition, this amendment removes an anomaly between § 2A3.1(b)(3) and § 3A1.2(a), and adds application notes to clarify the scope of §§ 2A3.1(b)(3), 2A3.2(b)(1), and 2A3.4(b)(3), using language derived from application notes pertaining to similar specific offense characteristics in Chapter Two, Part G.

* * * * *

8. Amendment: The Commentary to § 2A4.1 captioned "Application Notes" is amended by inserting the following additional note:

5. In the case of a conspiracy, attempt, or solicitation to kidnap, § 2X1.1 (Attempt, Solicitation, or Conspiracy) requires that the court apply any adjustment that can be determined with reasonable certainty. Therefore, for example, if an offense involved conspiracy to kidnap for the purpose of committing murder, subsection (b)(7) would reference first degree murder (resulting in an offense level of 43, subject to a possible 3-level reduction under § 2X1.1 (a), (b), or (c)). Similarly, for example, if an offense involved a kidnapping during which a participant attempted to murder the victim under circumstances that would have constituted first degree murder had death occurred, the offense referenced under subsection (b)(7) would be the offense of first degree murder.

Reason for Amendment: This amendment clarifies the operation of this guideline.

* * * * *

9. Amendment: The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the "Drug Equivalency Tables" in the subdivision captioned "Cocaine and Other Schedule I and II Stimulants" by inserting the following additional entry as the last entry:

1 gm of N-N-Dimethylamphetamine = 40 gm of marihuana,

and in the subdivision captioned "LSD, PCP, and Other Schedule I and II Hallucinogens" by inserting the following additional entry as the last entry:

1 gm of Phenylcyclohexamine (PCE) = 5.79 kg of marihuana.

Reason for Amendment: This amendment adds equivalencies for two controlled substances to make the Drug Equivalency Tables more comprehensive.

* * * * *

10. Amendment: Sections 2D1.1, 2D1.2, 2D1.5, 2D1.6, 2D1.7, 2D1.8, 2D1.9, 2D1.10, 2D1.11, 2D1.12, 2D1.13, 2D2.1, 2D2.2, 2D3.1, 2D3.2, 2D3.3, 2D3.4, and 2D3.5 are amended in their titles by inserting at the end thereof in each instance "; Attempt or Conspiracy".

Section 2D1.4, including accompanying commentary, is deleted.

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 12 by deleting:

If the amount seized does not reflect the scale of the offense, see Application Note 2 of the Commentary to § 2D1.4. If the offense involved negotiation to traffic in a controlled substance, see Application Note 1 of the Commentary to § 2D1.4.,

and inserting in lieu thereof:

Where there is no drug seizure or the amount seized does not reflect the scale of the offense, the court shall approximate the quantity of the controlled substance. In making this determination, the court may consider, for example, the price generally obtained for the controlled substance, financial or other records, similar transactions in controlled substances by the defendant, and the size or capability of any laboratory involved.

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 12 by inserting the following additional paragraphs at the end:

If the offense involved both a substantive drug offense and an attempt or conspiracy (e.g., sale of five grams of heroin and an attempt to sell an additional ten grams of heroin), the total quantity involved shall be aggregated to determine the scale of the offense.

In an offense involving negotiation to traffic in a controlled substance, the weight under negotiation in an uncompleted distribution shall be used to calculate the applicable amount. However, where the court finds that the defendant did not intend to produce and was not reasonably capable of producing the negotiated amount, the court shall exclude from the guideline calculation the amount that it finds the defendant did not intend to produce and was not reasonably capable of producing.

The Commentary to § 2D1.6 captioned "Application Note" is amended in Note 1 by deleting "Commentary to § 2D1.1, and Application Notes 1 and 2 of the Commentary to § 2D1.4," and inserting in lieu thereof "Commentary to § 2D1.1".

The Commentary to § 2X1.1 captioned "Application Notes" is amended in Note 1 by deleting "§ 2D1.4 (Attempts and Conspiracies)" wherever it appears and inserting in lieu thereof in each instance:

§ 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking, Including Possession with Intent to Commit These Offenses; Attempt or Conspiracy); § 2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Attempt or Conspiracy); § 2D1.5 (Continuing Criminal Enterprise; Attempt or Conspiracy); § 2D1.6 (Use of Communication Facility in Committing Drug Offense; Attempt or Conspiracy); § 2D1.7 (Unlawful Sale or Transportation of Drug Paraphernalia; Attempt or Conspiracy); § 2D1.8 (Renting or Managing a Drug Establishment; Attempt or Conspiracy); § 2D1.9 (Placing or Maintaining Dangerous Devices on Federal Property to Protect the Unlawful Production of Controlled Substances; Attempt or Conspiracy); § 2D1.10 (Endangering Human Life While Illegally Manufacturing a Controlled Substance; Attempt or Conspiracy); § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy); § 2D1.12 (Unlawful Possession, Manufacture, Distribution, or Importation of Prohibited Flask or Equipment; Attempt or Conspiracy); § 2D1.13 (Structuring Chemical Transactions or Creating a Chemical Mixture to Evade Reporting or Recordkeeping Requirements; Presenting False or Fraudulent Identification to Obtain a Listed Chemical; Attempt or Conspiracy); § 2D2.1 (Unlawful Possession; Attempt or Conspiracy); § 2D2.2 (Acquiring a Controlled Substance by Forgery, Fraud, Deception, or Subterfuge; Attempt or Conspiracy); § 2D3.1 (Illegal Use of Registration Number to Manufacture, Distribute, Acquire, or Dispense a Controlled Substance; Attempt or Conspiracy); § 2D3.2 (Manufacture of Controlled Substance in Excess of or Unauthorized by Registration Quota; Attempt or Conspiracy); § 2D3.3 (Illegal Use of Registration Number to Distribute or Dispense a Controlled Substance to Another Registrant or Authorized Person; Attempt or Conspiracy); § 2D3.4 (Illegal Transfer or Transshipment of a Controlled Substance; Attempt or Conspiracy); and § 2D3.5 (Violation of Recordkeeping or Reporting Requirements for Listed Chemicals and Certain Machines; Attempt or Conspiracy).

Appendix A (Statutory Index) is amended in the line beginning "21 U.S.C. § 846" by deleting "2D1.4" and inserting in lieu thereof "2D1.1, 2D1.2, 2D1.5, 2D1.6, 2D1.7, 2D1.8, 2D1.9, 2D1.10, 2D1.11, 2D1.12, 2D1.13, 2D2.1, 2D2.2, 2D3.1, 2D3.2, 2D3.3, 2D3.4, and 2D3.5"; and in the line beginning 21 U.S.C. § 963 by deleting "2D1.4" and inserting in lieu thereof "2D1.1, 2D1.2, 2D1.5, 2D1.6, 2D1.7, 2D1.8, 2D1.9, 2D1.10, 2D1.11, 2D1.12, 2D1.13, 2D2.1, 2D2.2, 2D3.1, 2D3.2, 2D3.3, 2D3.4, and 2D3.5".

Reason for Amendment: This amendment clarifies and simplifies the guideline provisions dealing with attempts and conspiracies in drug cases and conforms the structure of these provisions to that of other offense guidelines that specifically address attempts and conspiracies (i.e., attempts and conspiracies described in § 2X1.1(c)).

* * * * *

11. Amendment: Section 2D1.8 is amended by deleting subsections (a) and (b) and inserting in lieu thereof:

(a) Base Offense Level:

(1) The offense level from § 2D1.1 applicable to the underlying controlled substance offense, except as provided below.

(2) If the defendant had no participation in the underlying controlled substance offense other than allowing use of the premises, the offense level shall be 4 levels less than the offense level from § 2D1.1 applicable to the underlying controlled substance offense, but not greater than level 16.

(b) Special Instruction

(1) If the offense level is determined under subsection (a)(2), do not apply an adjustment under § 3B1.2 (Mitigating Role).

The Commentary to § 2D1.8 captioned "Application Note" is amended by deleting Note 1 and inserting in lieu thereof:

1. Subsection (a)(2) does not apply unless the defendant had no participation in the underlying controlled substance offense other than allowing use of the premises. For example, subsection (a)(2) would not apply to a defendant who possessed a dangerous weapon in connection with the offense, a defendant who guarded the cache of controlled substances, a defendant who arranged for the use of the premises for the purpose of facilitating a drug transaction, a defendant who allowed the use of more than one premises, a defendant who made telephone calls to facilitate the underlying controlled substance offense, or a defendant who otherwise assisted in the commission of the underlying controlled substance offense. Furthermore, subsection (a)(2) does not apply unless the defendant initially leased, rented, purchased, or otherwise acquired a possessory interest in the premises for a legitimate purpose. Finally, subsection (a)(2) does not apply if the defendant had previously allowed any premises to be used as a drug establishment without regard to whether such prior misconduct resulted in a conviction.

Reason for Amendment: This amendment is designed to reduce unwarranted disparity by requiring consideration of the scale of the underlying controlled substance offense in the guideline itself.

* * * * *

12. Amendment: The Commentary to § 2E1.4 captioned "Background" is amended by deleting:

The statute does not require that a murder covered by this section has been committed. The maximum term of imprisonment authorized by statute ranges from five years to life imprisonment.

and inserting in lieu thereof:

This guideline and the statute to which it applies do not require that a murder actually have been committed.

Reason for Amendment: This amendment makes editorial improvements and deletes a reference to the length of the maximum term of imprisonment authorized by statute for the offense covered by this section which was changed by Congress and, thus, is no longer accurate.

* * * * *

13. Amendment: Section 2L1.1(b)(2) is amended by deleting:

If the defendant previously has been convicted of smuggling, transporting, or harboring an unlawful alien, or a related offense, increase by 2 levels.

and inserting in lieu thereof:

If the offense involved the smuggling, transporting, or harboring of six or more unlawful aliens, increase as follows:

Number of unlawful aliens smuggled, transported, or harbored	Increase in level
6–24	Add 2.
25–99	Add 4.
100 or more	Add 6.

The Commentary to § 2L1.1 captioned "Application Notes" is amended in Note 1 by inserting the following additional sentence at the end:

The 'number of unlawful aliens smuggled, transported, or harbored' does not include the defendant.

The Commentary to § 2L1.1 captioned "Application Notes" is amended by deleting Notes 2, 3 and 4, and renumbering Notes 5, 6, 7, 8 and 9, as 2, 3, 4, 5, and 6 respectively.

The Commentary to § 2L1.1 captioned "Application Notes" is amended in Note 4 (formerly Note 7) by inserting "drug trafficking, or other serious criminal behavior," immediately following "subversive activity,".

The Commentary to § 2L1.1 captioned "Application Notes" is amended by deleting the text of Note 5 (formerly Note 8) and inserting in lieu thereof:

If the offense involved dangerous or inhumane treatment, death or bodily injury, possession of a dangerous weapon, or substantially more than 100 aliens, an upward departure may be warranted.

The Commentary to § 2L1.1 captioned "Background" is amended by deleting the last sentence and inserting in lieu thereof:

The offense level increases with the number of unlawful aliens smuggled, transported, or harbored. In large scale cases, an additional adjustment from § 3B1.1 (Aggravating Role) typically will apply to the most culpable defendants.

Section 2L2.1(b) is amended by deleting "Characteristic" and inserting in lieu thereof "Characteristics", and by inserting the following additional specific offense characteristic:

(2) If the offense involved six or more sets of documents, increase as follows:

Number of sets of documents	Increase in level
6–24	Add 2.
25–99	Add 4.
100 or more	Add 6.

The Commentary to § 2L2.1 captioned "Application Note" is amended by deleting "Note" and inserting in lieu thereof "Notes" and by inserting the following additional note:

2. Where it is established that multiple documents are part of a set intended for use by a single person, treat the set as one document.

Section 2L2.3(b) is amended by deleting "Characteristic" and inserting in lieu thereof "Characteristics", and by inserting the following additional specific offense characteristic:

(2) If the offense involved six or more passports, increase as follows:

Number of passports	Increase in level
6–24	Add 2
25–99	Add 4
100 or more	Add 6."

Section 3D1.2(d) is amended in the second paragraph by inserting "§§ 2L1.1, 2L2.3;" in the appropriate place by section; and in the third paragraph by deleting "2L1.1, 2L2.1," and "2L2.3,".

The Commentary to § 3D1.2 captioned "Application Notes" is amended in Note 3 by deleting example 7.

Reason for Amendment: Currently, § 2L1.1 provides the same offense level for a defendant who smuggles, transports, or harbors 1, 5, 25, 50, or any number of unlawful aliens. The inclusion of specific offense characteristic (b)(2) in § 2L1.1 in the guidelines as initially promulgated in April 1987 was intended to conform the guidelines to the offense level indicated by past practices data for "ongoing criminal conduct." However, further study has convinced the Commission that the specific offense characteristic "prior conviction for the same or similar offense" is not a good proxy for such conduct. Moreover, the inclusion of a prior criminal record variable in the offense guideline is inconsistent with the general treatment of prior record as a separate dimension in the guidelines.

This amendment addresses these issues by providing an enhancement in the guideline for the number of aliens smuggled, transported, or harbored as a more direct measure of the scope of the offense. Consistent with the Commission's general approach throughout the guidelines, the offense level increases gradually with the number of aliens. It should also be noted that § 3B1.1 (Aggravating Role) generally provides an additional increase of 2, 3, or 4 levels for organizers, managers, and supervisors in large-scale cases. Thus, the proposed table in § 2L1.1(b)(2) (pertaining to the number of aliens) is designed to work in conjunction with the operation of the role enhancements from § 3B1.1.

* * * * *

14. Amendment: The title of § 2L2.1 is amended by deleting "Evidence of Citizenship or Documents Authorizing Entry" and inserting in lieu thereof "Documents Relating to Naturalization, Citizenship, or Legal Resident Status; False Statement in Respect to the Citizenship or Immigration Status of Another; Fraudulent Marriage to Assist Alien to Evade Immigration Law".

The Commentary to § 2L2.1 captioned "Statutory Provisions" is amended by deleting "18 U.S.C. §§ 1425–1427, 1546. For additional statutory provision(s), see Appendix A (Statutory Index)" and inserting in lieu thereof "8 U.S.C. 1160(b)(7)(A), 1185(a)(3), (4), 1325(b), (c); 18 U.S.C. 1015, 1028, 1425–1427, 1546".

The title of § 2L2.2 is amended by deleting "Evidence of Citizenship or Documents Authorizing Entry for Own Use" and inserting in lieu thereof "Documents Relating to Naturalization, Citizenship, or Legal Resident Status for Own Use; False Personation or Fraudulent Marriage by Alien to Evade Immigration Law".

The Commentary to § 2L2.2 captioned "Statutory Provisions" is amended by deleting "18 U.S.C. 1423, 1425, 1546. For additional statutory provision(s), see Appendix A (Statutory Index)" and inserting in lieu thereof "8 U.S.C. 1160(b)(7)(A), 1185(a)(3), (5), 1325(b), (c); 18 U.S.C. 911, 1015, 1028, 1423–1426, 1546".

Appendix A (Statutory Index) is amended in the line beginning "18 U.S.C. 1028" by deleting "2L1.2" and inserting in lieu thereof "2L2.1"; and by deleting:

"8 U.S.C. 1325 2L1.2",

and inserting in lieu thereof:

"8 U.S.C. 1325(a) 2L1.2
8 U.S.C. 1325(b) 2L2.1, 2L2.2
8 U.S.C. 1325(c) 2L2.1, 2L2.2".

Reason for Amendment: This amendment expands the titles of §§ 2L2.1 and 2L2.2 to include additional statutes appropriately covered by these guidelines. Conforming revisions are made in the commentary of these guidelines and in Appendix A (Statutory Index).

* * * * *

15. Amendment: Section 2N2.1 is amended by inserting the following additional subsection:

"(b) Cross References

(1) If the offense involved fraud, apply § 2F1.1 (Fraud and Deceit).

(2) If the offense was committed in furtherance of, or to conceal, an offense covered by another offense guideline, apply that other offense guideline if the resulting offense level is greater than that determined above.".

The Commentary to § 2N2.1 captioned "Application Notes" is amended by deleting Note 2 as follows:

"2. If the offense involved theft, fraud, bribery, revealing trade secrets, or destruction of property, apply the guideline applicable to the underlying conduct, rather than this guideline.",

and inserting in lieu thereof:

"2. The cross reference at subsection (b)(1) addresses cases in which the offense involved fraud. The cross reference at subsection (b)(2) addresses cases in which the offense was committed in furtherance of, or to conceal, an offense covered by another offense guideline (e.g., theft, bribery, revealing trade secrets, or destruction of property).".

Reason for Amendment: This amendment inserts two cross references to cover cases more appropriately addressed by other offense guidelines. Previously, a similar instruction addressing such cases was contained in the commentary to this section.

* * * * *

16. Amendment: Section 2Q2.1(b)(1) is amended by deleting "involved a commercial purpose" and inserting in lieu thereof "(A) was committed for pecuniary gain or otherwise involved a commercial purpose; or (B) involved a pattern of similar violations".

Section 2Q2.1(b)(2) is amended by inserting "(A)" immediately before "involved"; and by inserting "; or (B) otherwise created a significant risk of infestation or disease transmission potentially harmful to humans, fish, wildlife, or plants" immediately following "law".

Section 2Q2.1(b)(3)(B) is amended by deleting "a quantity of fish, wildlife, or plants that was substantial in relation either to the overall population of the species or to a discrete subpopulation" and inserting in lieu thereof "(i) marine mammals that are listed as depleted under the Marine Mammal Protection Act (as set forth in 50 CFR 216.15), (ii) fish, wildlife, or plants that are listed as endangered or threatened by the Endangered Species Act (as set forth in 50 CFR part 17), or (iii) fish, wildlife, or plants that are listed in Appendix I to the Convention on International Trade in Endangered Species of Wild Fauna or Flora (as set forth in 50 CFR part 23)".

The Commentary to § 2Q2.1 is amended by inserting, immediately before "Background", the following:

"*Application Notes:*

1. 'For pecuniary gain' means for receipt of, or in anticipation of receipt of, anything of value, whether monetary or in goods or services. Thus, offenses committed for pecuniary gain include both monetary and barter transactions. Similarly, activities designed to increase gross revenue are considered to be committed for pecuniary gain.

2. The acquisition of fish, wildlife, or plants for display to the public, whether for a fee or donation and whether by an individual or an organization, including a governmental entity, a private non-profit organization, or a private for-profit organization, shall be considered to involve a 'commercial purpose.'

3. For purposes of subsection (b)(2), the quarantine requirements include those set forth in 9 CFR part 92, and 7 CFR chapter III. State quarantine laws are included as well.

4. When information is reasonably available, 'market value' under subsection (b)(3)(A) shall be based on the fair-market retail price. Where the fair-market retail price is difficult to ascertain, the court may make a reasonable estimate using any reliable information, such as the reasonable replacement or restitution cost or the acquisition and preservation (e.g., taxidermy) cost. Market value, however, shall not be based on measurement of aesthetic loss (so called 'contingent valuation' methods).

5. If the offense involved the destruction of a substantial quantity of fish, wildlife, or plants, and the seriousness of the offense is not adequately measured by the market value, an upward departure may be warranted.".

The Commentary to § 2Q2.1 captioned "Background" is amended by deleting the last two sentences.

Section 3D1.2(d) is amended in the second paragraph by inserting "§ 2Q2.1;" in the appropriate place.

Reason for Amendment: This amendment is designed to strengthen the deterrent effect of the sanctions for violations covered by this guideline. The amendment expands the specific offense characteristic in subsection (b)(1) to cover categories of offenses that appear to be equally serious to those committed for a commercial purpose. In addition, the amendment expands the specific offense characteristic in subsection (b)(2) to cover other comparable types of risk of harm. Furthermore, the amendment modifies the specific offense characteristic in subsection (b)(3) to better encompass the types of cases that the Commission intended to cover.

* * * * *

17. Amendment: The Introductory Commentary to Chapter Two, Part T, Subpart 3, is amended by deleting "'. These guidelines are primarily aimed at" and inserting in lieu thereof ", and is designed to address violations involving"; by deleting "They are" and inserting in lieu thereof "It is"; by deleting "legislation generally applies" and inserting in lieu thereof "criminal statutes apply"; by inserting "if applicable," immediately following "guideline,"; and by deleting "these guidelines" and inserting in lieu thereof "the guideline in this part".

Section 2T3.1 is amended in the title by inserting at the end "; Receiving or Trafficking in Smuggled Property".

Section 2T3.1 is amended by inserting the following additional subsection:

"(c) Cross Reference

(1) If the offense involves a contraband item covered by another offense guideline, apply that offense guideline if the resulting offense level is greater than that determined above.".

The Commentary to § 2T3.1 captioned "Application Notes" is amended in Note 2 by deleting "the court should impose a sentence above the guideline" and inserting in lieu thereof "an upward departure may be warranted".

Section 2T3.2, including accompanying commentary, is deleted.

Section 3D1.2(d) is amended in the second paragraph by deleting ", 2T3.2".

Appendix A (Statutory Index) is amended in the lines beginning "18 U.S.C. 545", "18 U.S.C. 547", "18 U.S.C. 549", and "19 U.S.C. 1464" by deleting in each instance ", 2T3.2".

Reason for Amendment: This amendment inserts a cross reference in § 2T3.1 to cover cases more appropriately addressed by other offense guidelines. Previously, a similar instruction was set forth in the Introductory Commentary to this part. In addition, this amendment consolidates §§ 2T3.1 and 2T3.2 into one guideline since each contains the same offense levels and adjustments.

* * * * *

18. Amendment: The Commentary to § 3A1.1 captioned "Application Notes" is amended in Note 1 by inserting the following sentence at the end:

"Similarly, for example, a bank teller is not an unusually vulnerable victim solely by virtue of the teller's position in a bank".

Reason for Amendment: This amendment clarifies the circumstances in which this adjustment applies.

* * * * *

19. Amendment: Section 3A1.2(a) is amended by deleting "a law enforcement or corrections officer; a former law enforcement or corrections officer; an officer or employee included in 18 U.S.C. 1114; a former officer or employee included in 18 U.S.C. 1114;" and inserting in lieu thereof "a government officer or employee; a former government officer or employee;".

The Commentary to § 3A1.2 captioned "Application Notes" is amended in Note 2 by deleting "are not expressly covered by this section. The court should make an upward departure of at least three levels in those unusual cases in which such persons are victims" and inserting in lieu thereof "although covered by this section, do not represent the heartland of the conduct covered. An upward departure to reflect the potential disruption of the governmental function in such cases typically would be warranted".

The Commentary to § 3A1.2 captioned "Application Notes" is amended in Note 4 by deleting "law enforcement or corrections officer or other person

covered under 18 U.S.C. 1114" and inserting in lieu thereof "government officer or employee"; and by inserting the following additional sentence at the end:

"This adjustment also would not apply in the case of a robbery of a postal employee because the offense guideline for robbery contains an enhancement (§ 2B3.1(a)) that takes such conduct into account.".

Reason for Amendment: This amendment expands the coverage of this guideline to apply to any government officer or employee, former government officer or employee, or a member of the immediate family of any of the above, who is targeted because of the official conduct or position of that officer or employee.

* * * * *

20. Amendment: The Introductory Commentary to Chapter Three, Part B is amended by deleting the third sentence of the first paragraph.

The Commentary to § 3B1.2 captioned "Application Notes" is amended by inserting the following additional note:

"4. If a defendant has received a lower offense level by virtue of being convicted of an offense significantly less serious than warranted by his actual criminal conduct, a reduction for a mitigating role under this section ordinarily is not warranted because such defendant is not substantially less culpable than a defendant whose only conduct involved the less serious offense. For example, if a defendant whose actual conduct involved a minimal role in the distribution of 25 grams of cocaine (an offense having a chapter Two offense level of 14 under § 2D1.1) is convicted of simple possession of cocaine (an offense having a chapter Two offense level of 6 under § 2D2.1), no reduction for a mitigating role is warranted because the defendant is not substantially less culpable than a defendant whose only conduct involved the simple possession of cocaine.".

Reason for Amendment: This amendment clarifies a situation in which a defendant is not ordinarily eligible for a reduction under § 3B1.2 (Mitigating Role), and moves the discussion of this issue from the Introductory Commentary of Chapter Three, Part B to the commentary of § 3B1.2 where it more appropriately belongs.

* * * * *

21. Amendment: The Commentary to § 3C1.2 captioned "Application Notes" is amended by inserting the following additional note:

"5. If death or bodily injury results or the conduct posed a substantial risk of death or bodily injury to more than one person, an upward departure may be warranted. See Chapter Five, Part K (Departures).".

Reason for Amendment: This amendment adds an application note in the commentary to this section that describes circumstances in which an upward departure may be warranted.

* * * * *

22. Amendment: Section 3E1.1 is amended by deleting:

"(a) If the defendant clearly demonstrates a recognition and affirmative acceptance of personal responsibility for his criminal conduct, reduce the offense level by 2 levels.

(b) A defendant may be given consideration under this section without regard to whether his conviction is based upon a guilty plea or a finding of guilt by the court or jury or the practical certainty of conviction at trial.

(c) A defendant who enters a guilty plea is not entitled to a sentencing reduction under this section as a matter of right.",

and inserting in lieu thereof:

"(a) If the defendant clearly demonstrates acceptance of responsibility for his offense, decrease the offense level by 2 levels.

(b) If the defendant qualifies for a decrease under subsection (a), the offense level determined prior to the operation of subsection (a) is level 16 or greater, and the defendant has assisted authorities in the investigation or prosecution of his own misconduct by taking one or more of the following steps:

(1) timely providing complete information to the government concerning his own involvement in the offense; or

(2) timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the court to allocate its resources efficiently,

decrease by 1 additional level.".

The Commentary to § 3E1.1 captioned "Application Notes" is amended in Note 1 by deleting "for this provision" and inserting in lieu thereof "under subsection (a)"; by deleting subdivision (c); by redesignating subdivisions (a) and (b) as (b) and (c) respectively; by inserting the following as subdivision (a):

"(a) truthfully admitting the conduct comprising the offense(s) of conviction, and truthfully admitting or not falsely denying any additional relevant conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct). Note that a defendant is not required to volunteer, or affirmatively admit, relevant conduct beyond the offense of conviction in order to obtain a reduction under subsection (a). A defendant may remain silent in respect to relevant conduct beyond the offense of conviction without affecting his ability to obtain a reduction under this subsection. However, a defendant who falsely denies, or frivolously contests, relevant conduct that the court determines to be true has acted in a manner inconsistent with acceptance of responsibility;";

in subdivision (f) by deleting "and" immediately following "offense;"; by redesignating subdivision (g) as (h); and by inserting the following as subdivision (g):

"(g) post-offense rehabilitative efforts (e.g., counseling or drug treatment); and".

The Commentary to § 3E1.1 captioned "Application Notes" is amended in Note 3 by deleting "truthful admission of involvement in the offense and related conduct" and inserting in lieu thereof "truthfully admitting the conduct comprising the offense of conviction, and truthfully admitting or not falsely denying any additional relevant conduct for which he is accountable under § 1B1.3 (Relevant Conduct)(see Application Note 1(a)),"; by deleting "this section" and inserting in lieu thereof "subsection (a)"; and by inserting the following additional sentence at the end:

"A defendant who enters a guilty plea is not entitled to an adjustment under this section as a matter of right.".

The Commentary to § 3E1.1 captioned "Application Notes" is amended by inserting the following additional note:

"6. Subsection (a) provides a 2-level decrease in offense level. Subsection (b) provides an additional 1-level decrease in offense level for a defendant at offense level 16 or greater prior to the operation of subsection (a) who both qualifies for a decrease under subsection (a) and who has assisted authorities in the investigation or prosecution of his own misconduct by taking one or both of the steps set forth in subsection (b). The timeliness of the defendant's acceptance of responsibility is a consideration under both subsections, and is context specific. In general, the conduct qualifying for a decrease in offense level under subsection (b)(1) or (2) will occur particularly early in the case. For example, to qualify under subsection (b)(2), the defendant must have notified authorities of his intention to enter a plea of guilty at a sufficiently early point in the process so that the government may avoid preparing for trial and the court may schedule its calendar efficiently.".

The Commentary to § 3E1.1 captioned "Background" is amended by deleting "a recognition and affirmative acceptance of personal responsibility for the offense and related conduct" and inserting in lieu thereof "acceptance of responsibility for his offense"; and by inserting the following additional paragraph at the end:

"Subsection (a) provides a 2-level decrease in offense level. Subsection (b) provides an additional 1-level decrease for a defendant at offense level 16 or greater prior to operation of subsection (a) who both qualifies for a decrease under subsection (a) and has assisted authorities in the investigation or prosecution of his own misconduct by taking one or more of the steps specified in subsection (b). Such a defendant has accepted responsibility in a way that ensures

the certainty of his just punishment in a timely manner, thereby appropriately meriting an additional reduction. Subsection (b) does not apply, however, to a defendant whose offense level is level 15 or lower prior to application of subsection (a). At offense level 15 or lower, the reduction in the guideline range provided by a 2-level decrease in offense level under subsection (a) (which is a greater proportional reduction in the guideline range than at higher offense levels due to the structure of the Sentencing Table) is adequate for the court to take into account the factors set forth in subsection (b) within the applicable guideline range.".

Section 4B1.1 is amended in the last sentence by deleting "2-levels" and inserting in lieu thereof "the number of levels corresponding to that adjustment".

Section 4B1.4(b) is amended in the last sentence by inserting "an adjustment from" immediately following "If", and by deleting "reduce by 2 levels" and inserting in lieu thereof "decrease the offense level by the number of levels corresponding to that adjustment".

Reason for Amendment: This amendment provides an additional reduction of one level for certain defendants whose acceptance of responsibility includes assistance to the government in the investigation or prosecution of their own misconduct. In addition, it replaces the term "offense and related conduct," which has been found to cause confusion, with the term "offense" and provides guidance as to the meaning of this term in the context of this guideline.

* * * * *

23. Amendment: Section 4A1.3 is amended in the fourth paragraph by deleting "a Category IV criminal history" wherever it appears and inserting in lieu thereof in each instance "Criminal History Category IV"; and by deleting:

"The Commission contemplates that there may, on occasion, be a case of an egregious, serious criminal record in which even the guideline range for a Category VI criminal history is not adequate to reflect the seriousness of the defendant's criminal history. In such a case, a decision above the guideline range for a defendant with a Category VI criminal history may be warranted. However, this provision is not symmetrical. The lower limit of the range for a Category I criminal history is set for a first offender with the lowest risk of recidivism. Therefore, a departure below the lower limit of the guideline range for a Category I criminal history on the basis of the adequacy of criminal history cannot be appropriate.",

and by inserting in lieu thereof:

"The Commission contemplates that there may, on occasion, be a case of an egregious, serious criminal record in which even the guideline range for Criminal History Category VI is not adequate to reflect the seriousness of the defendant's criminal history. In such a case, a departure above the guideline range for a defendant with Criminal History Category VI may be warranted. In determining whether an upward departure from Criminal History Category VI is warranted, the court should consider that the nature of the prior offenses rather than simply their number is often more indicative of the seriousness of the defendant's criminal record. For example, a defendant with five prior sentences for very large-scale fraud offenses may have 15 criminal history points, within the range of points typical for Criminal History Category VI, yet have a substantially more serious criminal history overall because of the nature of the prior offenses. On the other hand, a defendant with nine prior 60-day jail sentences for offenses such as petty larceny, prostitution, or possession of gambling slips has a higher number of criminal history points (18 points) than the typical Criminal History Category VI defendant, but not necessarily a more serious criminal history overall. Where the court determines that the extent and nature of the defendant's criminal history, taken together, are sufficient to warrant an upward departure from Criminal History Category VI, the court should structure the departure by moving incrementally down the sentencing table to the next higher offense level in Criminal History Category VI until it finds a guideline range appropriate to the case.

However, this provision is not symmetrical. The lower limit of the range for Criminal History Category I is set for a first offender with the lowest risk of recidivism. Therefore, a departure below the lower limit of the guideline range for Criminal History Category I on the basis of the adequacy of criminal history cannot be appropriate.".

Reason for Amendment: This amendment provides additional guidance concerning upward departure from Criminal History Category VI on the basis of adequacy of criminal history category, and makes minor editorial changes.

* * * * *

24. Amendment: Section 4B1.2(3) is amended by deleting the last sentence and inserting in lieu thereof:

"The date that a defendant sustained a conviction shall be the date that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of nolo contendere.".

Reason for Amendment: This amendment conforms the definition of "sustaining a conviction" in § 4B1.2 to the definition of "convicted of an offense" in § 4A1.2.

* * * * *

25. Amendment: The Commentary to § 4B1.2 captioned "Application Notes" is amended by deleting the text of Note 2 and inserting in lieu thereof:

" 'Crime of violence' includes murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses, robbery, arson, extortion, extortionate extension of credit, and burglary of a dwelling. Other offenses are included where (A) that offense has as an element the use, attempted use, or threatened use of physical force against the person of another, or (B) the conduct set forth (i.e., expressly charged) in the count of which the defendant was convicted involved use of explosives (including any explosive material or destructive device) or, by its nature, presented a serious potential risk of physical injury to another. Under this section, the conduct of which the defendant was convicted is the focus of inquiry.

The term 'crime of violence' does not include the offense of unlawful possession of a firearm by a felon. Where the instant offense is the unlawful possession of a firearm by a felon, § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) provides an increase in offense level if the defendant has one or more prior felony convictions for a crime of violence or controlled substance offense; and, if the defendant is sentenced under the provisions of 18 U.S.C. 924(e), § 4B1.4 (Armed Career Criminal) will apply.".

Reason for Amendment: This amendment ratifies a previous amendment to the commentary to the career offender guideline (amendment 433, effective November 1, 1991) and corrects a clerical error in a reference to § 2K2.1. The previous amendment clarified that application of § 4B1.2 is governed by the offense of conviction, and that the offense of being a felon in possession of a firearm is not a crime of violence within the meaning of this guideline. As a clarifying and conforming change, the previous commentary amendment reflected Commission intent that the term "crime of violence," as that term is used in §§ 4B1.1–4B1.2, be interpreted consistently with that term as used in other provisions of the Guidelines Manual. For example, § 4B1.4, as promulgated by amendment 355, effective November 1, 1990, provides an increased offense level for a "felon-in-possession" defendant who is subject to an enhanced sentence under 18 U.S.C. § 924(e) and who used or possessed the firearm in connection with a crime of violence.

* * * * *

26. Amendment: Chapter Five, part A, is amended in the Sentencing Table at Offense Level 7, Criminal History Category I, by deleting "1-7" and inserting in lieu thereof "0 6"; and at Offense Level 8, Criminal History Category I, by deleting "2–8" and inserting in lieu thereof "0–6".

Chapter Five, part A is amended in the Sentencing Table by designating four zones as follows: Zone A (containing all guideline ranges having a

minimum of zero months); Zone B (containing all guideline ranges having a minimum of at least one but not more than six months); Zone C (containing all guideline ranges having a minimum of eight, nine, or ten months); and Zone D (containing all guideline ranges having a minimum of twelve months or more).

Section 5B1.1(a) is deleted and the following inserted in lieu thereof:

"(a) Subject to the statutory restrictions in subsection (b) below, a sentence of probation is authorized if:

(1) the applicable guideline range is in Zone A of the Sentencing Table; or

(2) the applicable guideline range is in Zone B of the Sentencing Table and the court imposes a condition or combination of conditions requiring intermittent confinement, community confinement, or home detention as provided in subsection (c)(3) of § 5C1.1 (Imposition of a Term of Imprisonment).".

The Commentary to § 5B1.1 captioned "Application Notes" is amended in Note 1 by deleting:

"(a) Where the minimum term of imprisonment specified in the guideline range from the Sentencing Table is zero months. In such case, a condition requiring a period of community confinement, home detention, or intermittent confinement may be imposed but is not required.

(b) Where the minimum term of imprisonment specified in the guideline range from the Sentencing Table is at least one but not more than six months.",

and inserting in lieu thereof:

"(a) Where the applicable guideline range is in Zone A of the Sentencing Table (i.e., the minimum term of imprisonment specified in the applicable guideline range is zero months). In such cases, a condition requiring a period of community confinement, home detention, or intermittent confinement may be imposed but is not required.

(b) Where the applicable guideline range is in Zone B of the Sentencing Table (i.e., the minimum term of imprisonment specified in the applicable guideline range is at least one but not more than six months).";

and by deleting "Offense Level is 8 and the Criminal History Category is I" and inserting in lieu thereof "offense level is 7 and the criminal history category is II".

The Commentary to § 5B1.1 captioned "Application Notes" is amended in Note 2 by deleting:

"Where the minimum term of imprisonment specified in the guideline range from the Sentencing Table is more than six months",

and inserting in lieu thereof:

"Where the applicable guideline range is in Zone C or D of the Sentencing Table (i.e., the minimum term of imprisonment specified in the applicable guideline range is eight months or more)".

The Commentary to § 5B1.1 captioned "Background" is amended by deleting "1st Sess. 89). Subsection" and inserting in lieu thereof "1st Sess. 89 (1983)). Section".

Section 5C1.1(a) is amended by inserting "applicable" immediately before "guideline range".

Section 5C1.1(b) is amended by deleting "minimum term of imprisonment in the applicable guideline range in the Sentencing Table is zero months" and inserting in lieu thereof "applicable guideline range is in Zone A of the Sentencing Table".

Sections 5C1.1 (c) and (d) are deleted and the following inserted in lieu thereof:

"(c) If the applicable guideline range is in Zone B of the Sentencing Table, the minimum term may be satisfied by—

(1) a sentence of imprisonment; or

(2) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in subsection (e), provided that at least one month is satisfied by imprisonment; or

(3) a sentence of probation that includes a condition or combination of conditions that substitute intermittent confinement, community confinement, or home detention for imprisonment according to the schedule in subsection (e).

(d) If the applicable guideline range is in Zone C of the Sentencing Table, the minimum term may be satisfied by—

(1) a sentence of imprisonment; or

(2) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in subsection (e), provided that at least one-half of the minimum term is satisfied by imprisonment.".

Section 5C1.1(f) is deleted and the following inserted in lieu thereof:

"(f) If the applicable guideline range is in Zone D of the Sentencing Table, the minimum term shall be satisfied by a sentence of imprisonment.".

The Commentary to § 5C1.1 captioned "Application Notes" is amended in Note 1 by deleting "5C1.1(a)" and inserting in lieu thereof "(a)"; and by deleting "guideline range specified in the Sentencing Table" and inserting in lieu thereof "applicable guideline range specified in the Sentencing Table in part A of this chapter".

The Commentary to § 5C1.1 captioned "Application Notes" is amended in Note 2 by deleting:

"Subsection 5C1.1(b) provides that where the minimum term of imprisonment specified in the guideline range from the Sentencing Table is zero months.",

and inserting in lieu thereof:

"Subsection (b) provides that where the applicable guideline range is in Zone A of the Sentencing Table (i.e., the minimum term of imprisonment specified in the applicable guideline range is zero months).";

and by deleting "may, for example," and inserting in lieu thereof ", for example, may".

The Commentary to § 5C1.1 captioned "Application Notes" is amended in Note 3 by deleting:

"Subsection 5C1.1(c) provides that where the minimum term of imprisonment specified in the guideline range from the Sentencing Table is at least one but not more than six months",

and inserting in lieu thereof:

"Subsection (c) provides that where the applicable guideline range is in Zone B of the Sentencing Table (i.e., the minimum term of imprisonment specified in the applicable guideline range is at least one but not more than six months)";

by deleting "3–9" wherever it appears and inserting in lieu thereof in each instance "4–10"; by deleting "at least three months" and inserting in lieu thereof "at least four months"; by deleting "one-half of the minimum term specified in the guideline range from the Sentencing Table, but in no event less than one month," and inserting in lieu thereof "one month"; by deleting "of two months" and inserting in lieu thereof "of one month"; by deleting "requiring two months" and inserting in lieu thereof "requiring three months"; by deleting "§ 5C1.1(c)(2)" and inserting in lieu thereof "subsection (c)(3)"; and by deleting "§ 5C1.1(c)(3)" and inserting in lieu thereof "subsection (c)(2)".

The Commentary to § 5C1.1 captioned "Application Notes" is amended in Note 4 by deleting:

"Subsection 5C1.1(d) provides that where the minimum term specified in the guideline range from the Sentencing Table is more than six but not more than ten months",

and inserting in lieu thereof:

"Subsection (d) provides that where the applicable guideline range is in Zone C of the Sentencing Table (i.e., the minimum term specified in the applicable guideline range is eight, nine, or ten months)";

and by deleting "§ 5C1.1(d)" wherever it appears and inserting in lieu thereof in each instance "subsection (d)".

The Commentary to § 5C1.1 captioned "Application Notes" is amended in Note 5 by deleting "5C1.1(e)" and inserting in lieu thereof "(e)".

The Commentary to § 5C1.1 captioned "Application Notes" is amended in Note 7 by deleting "5C1.1(c)" and inserting in lieu thereof "subsections (c)".

The Commentary to § 5C1.1 captioned "Application Notes" is amended by deleting Note 8 and inserting in lieu thereof:

"Subsection (f) provides that, where the applicable guideline range is in Zone D of the Sentencing Table (i.e., the minimum term of imprisonment specified in the applicable guideline range is twelve months or more), the minimum term must be satisfied by a sentence of imprisonment without the use of any of the imprisonment substitutes in subsection (e).".

Reason for Amendment: This amendment expands the number of categories in the Sentencing Table in Criminal History Category I in which the court has discretion to impose a sentence without imprisonment or confinement conditions. In addition, it removes the requirement that a "split sentence" include a term of imprisonment of at least one-half of the minimum of the guideline range for less serious categories of offenses and offenders and substitutes a requirement that such term of imprisonment be at least one month. Finally, this amendment reformats these sections to make their operation clearer.

* * * * *

27. Amendment: Chapter Five, part E, is amended by inserting the following additional section:

"§ 5E1.5. Costs of Prosecution (Policy Statement)

Costs of prosecution shall be imposed on a defendant as required by statute.

Commentary

Background: Various statutes require the court to impose the costs of prosecution: 7 U.S.C. 13 (larceny or embezzlement in connection with commodity exchanges); 21 U.S.C. 844 (simple possession of controlled substances) (unless the court finds that the defendant lacks the ability to pay); 26 U.S.C. 7201 (attempt to defeat or evade income tax); 26 U.S.C. 7202 (willful failure to collect or pay tax); 26 U.S.C. 7203 (willful failure to file income tax return, supply information, or pay tax); 26 U.S.C. 7206 (fraud and false statements); 26 U.S.C. 7210 (failure to obey summons); 26 U.S.C. 7213 (unauthorized disclosure of information); 26 U.S.C. 7215 (offenses with respect to collected taxes); 26 U.S.C. 7216 (disclosure or use of information by preparers of returns); 26 U.S.C. 7232 (failure to register or false statement by gasoline manufacturer or producer); 42 U.S.C. 1302c–9 (improper FOIA disclosure); 43 U.S.C. 942–6 (rights of way for Alaskan wagon roads).".

Reason for Amendment: This amendment makes the Guidelines Manual more comprehensive by adding a section to provide notice of certain statutory requirements pertaining to the imposition of the costs of prosecution.

* * * * *

28. Amendment: Section 5F1.6 is amended by deleting "21 U.S.C. 853a" and inserting in lieu thereof "21 U.S.C. 862".

The Commentary to § 5F1.6 captioned "Application Notes" is amended in Note 1 by deleting "21 U.S.C. 853a(d)" and inserting in lieu thereof "21 U.S.C. 862(d)".

The Commentary to § 5F1.6 captioned "Background" is amended by deleting "21 U.S.C. 853a" wherever it appears and inserting in lieu thereof in each instance "21 U.S.C. 862"; by deleting "21 U.S.C. 853a(a)(1)" and inserting in lieu thereof "21 U.S.C. 862(a)(1)"; by deleting "(a)(2)" and inserting in lieu thereof "(b)(1)"; by deleting "21 U.S.C. 853a(a)(1)(C)" and inserting in lieu thereof "21 U.S.C. 862(a)(1)(C)"; and by deleting "21 U.S.C. 853a(c)" and inserting in lieu thereof "21 U.S.C. 862(c)".

Reason for Amendment: This amendment conforms the references to the statutory provisions underlying this guideline as such provisions were renumbered by the Comprehensive Crime Control Act of 1990.

* * * * *

29. Amendment: Section 5G1.3(b) is amended by deleting "constituted part of the same course of conduct as the instant offense and"; and by deleting:

"or if the prior undischarged term of imprisonment resulted from a federal offense and was imposed pursuant to the Sentencing Reform Act, the sentence for the instant offense shall be imposed to result in a combined sentence equal to the total punishment that would have been imposed under § 5G1.2 (Sentencing on Multiple Counts of Conviction) had all the sentences been imposed at the same time",

and inserting in lieu thereof:

"the sentence for the instant offense shall be imposed to run concurrently to the undischarged term of imprisonment".

Section 5G1.3(c) is amended by inserting "(Policy Statement)" immediately before "In"; and by deleting "unexpired" and inserting in lieu thereof "undischarged".

The Commentary to § 5G1.3 captioned "Application Notes" is amended by deleting Notes 2–4 and inserting in lieu thereof:

"2. Subsection (b) (which may apply only if subsection (a) does not apply), addresses cases in which the conduct resulting in the undischarged term of imprisonment has been fully taken into account under § 1B1.3 (Relevant Conduct) in determining the offense level for the instant offense. This can occur, for example, where a defendant is prosecuted in both federal and state court, or in two or more federal jurisdictions, for the same criminal conduct or for different criminal transactions that were part of the same course of conduct.

When a sentence is imposed pursuant to subsection (b), the court should adjust for any term of imprisonment already served as a result of the conduct taken into account in determining the sentence for the instant offense. Example: The defendant has been convicted of a federal offense charging the sale of 40 grams of cocaine. Under § 1B1.3 (Relevant Conduct), the defendant is held accountable for the sale of an additional 15 grams of cocaine that is part of the same course of conduct for which the defendant has been convicted and sentenced in state court (the defendant received a nine-month sentence of imprisonment, of which he has served six months at the time of sentencing on the instant federal offense). The guideline range applicable to the defendant is 10–16 months (Chapter Two offense level of 14 for sale of 55 grams of cocaine; 2-level reduction for acceptance of responsibility; final offense level of 12; Criminal History Category I). The court determines that a sentence of 13 months provides the appropriate total punishment. Because the defendant has already served six months on the related state charge, a sentence of seven months, imposed to run concurrently with the remainder of the defendant's state sentence, achieves this result. For clarity, the court should note on the Judgment in a Criminal Case Order that the sentence imposed is not a departure from the guidelines because the defendant has been credited for guideline purposes under § 5G1.3(b) with six months served in state custody.

3. Where the defendant is subject to an undischarged term of imprisonment in circumstances other than those set forth in subsections (a) or (b), subsection (c) applies and the court shall impose a consecutive sentence to the extent necessary to fashion a sentence resulting in a reasonable incremental punishment for the multiple offenses. In some circumstances, such incremental punishment can be achieved by the imposition of a sentence that is concurrent with the remainder of the unexpired term of imprisonment. In such cases, a consecutive sentence is not required. To the extent practicable, the court should consider a reasonable incremental penalty to be a sentence for the instant offense that results in a combined sentence of imprisonment that approximates the total punishment that would have been imposed under § 5G1.2 (Sentencing on Multiple Counts of Conviction) had all of the offenses been federal offenses for which sentences were being imposed at the same time. It is recognized that this determination frequently will require an approximation. Where the defendant is serving a term of imprisonment for a state offense, the information available may permit only a rough estimate of the total punishment that would have been imposed under the guidelines. Where the offense resulting in the undischarged term of imprisonment is a federal offense for which a guideline determination has previously been made, the task will be somewhat more straightforward, although even in such cases a precise determination may not be possible.

It is not intended that the above methodology be applied in a manner that unduly complicates or prolongs the sentencing process. Additionally, this methodology does not, itself, require the court

to depart from the guideline range established for the instant federal offense. Rather, this methodology is meant to assist the court in determining the appropriate sentence (e.g., the appropriate point within the applicable guideline range, whether to order the sentence to run concurrently or consecutively to the undischarged term of imprisonment, or whether a departure is warranted). Generally, the court may achieve an appropriate sentence through its determination of an appropriate point within the applicable guideline range for the instant federal offense, combined with its determination of whether that sentence will run concurrently or consecutively to the undischarged term of imprisonment.

Examples of the Application of Subsection (c):

(A) The guideline range applicable to the instant federal offense is 24–30 months. The court determines that a total punishment of 36 months' imprisonment would appropriately reflect the instant federal offense and the offense resulting in the undischarged term of imprisonment. The undischarged term of imprisonment is an indeterminate sentence of imprisonment with a 60-month maximum. At the time of sentencing on the instant federal offense, the defendant has served ten months on the undischarged term of imprisonment. In this case, a sentence of 26 months' imprisonment to be served concurrently with the remainder of the undischarged term of imprisonment would (1) be within the guideline range for the instant federal offense, and (2) achieve an appropriate total punishment (36 months).

(B) The applicable guideline range for the instant federal offense is 24–30 months. The court determines that a total punishment of 36 months' imprisonment would appropriately reflect the instant federal offense and the offense resulting in the undischarged term of imprisonment. The undischarged term of imprisonment is a six-month determinate sentence. At the time of sentencing on the instant federal offense, the defendant has served three months on the undischarged term of imprisonment. In this case, a sentence of 30 months' imprisonment to be served consecutively to the undischarged term of imprisonment would (1) be within the guideline range for the instant federal offense, and (2) achieve an appropriate total punishment (36 months).

(C) The applicable guideline range for the instant federal offense is 24–30 months. The court determines that a total punishment of 60 months' imprisonment would appropriately reflect the instant federal offense and the offense resulting in the undischarged term of imprisonment. The undischarged term of imprisonment is a 12-month determinate sentence. In this case, a sentence of 30 months' imprisonment to be served consecutively to the undischarged term of imprisonment would be the greatest sentence imposable without departure for the instant federal offense.

(D) The applicable guideline range for the instant federal offense is 24–30 months. The court determines that a total punishment of 36 months' imprisonment would appropriately reflect the instant federal offense and the offense resulting in the undischarged term of imprisonment. The undischarged term of imprisonment is an indeterminate sentence with a 60-month maximum. At the time of sentencing on the instant federal offense, the defendant has served 22 months on the undischarged term of imprisonment. In this case, a sentence of 24 months to be served concurrently with the remainder of the undischarged term of imprisonment would be the lowest sentence imposable without departure for the instant federal offense.".

Reason for Amendment: This amendment deletes the second prong of § 5G1.3(b). Cases currently addressed by this prong would henceforth be addressed by subsection (c). Consistent with the structure of the Guidelines Manual, subsection (c) is expressly designated a policy statement. The Commission has found a number of problems in implementation of the second prong of subsection (b). This amendment would provide for consideration of such cases under subsection (c), which is designed to produce a similar result but requires less precise calculations. In addition, this amendment provides additional commentary explaining, and providing examples of, the operation of this section.

* * * * *

30. Amendment: Chapter 5, part H is amended by inserting the following additional section:

"§ 5H1.12. Lack of Guidance as a Youth and Similar Circumstances (Policy Statement)

Lack of guidance as a youth and similar circumstances indicating a disadvantaged upbringing are not relevant grounds for imposing a sentence outside the applicable guideline range.".

Chapter I, part A, subpart 4(b) is amended in the fourth sentence of the first paragraph by inserting "§ 5H1.12 (Lack of Guidance as a Youth and Similar Circumstances)," immediately following "§ 5H1.10 (Race, Sex, National Origin, Creed, Religion, and Socio-Economic Status),".

Reason for Amendment: This amendment provides that the factors specified are not appropriate grounds for departure.

* * * * *

31. Amendment: Section 6B1.2(a) is amended by inserting "or the sentencing guidelines" immediately following "statutory purposes of sentencing".

Section 6B1.2(a) is amended by inserting the following additional paragraph at the end:

"Provided, that a plea agreement that includes the dismissal of a charge or a plea agreement not to pursue a potential charge shall not preclude the conduct underlying such charge from being considered under the provisions of § 1B1.3 (Relevant Conduct) in connection with the count(s) of which the defendant is convicted.".

The Commentary to § 6B1.2 is amended in the first paragraph by deleting "This section makes clear that a court may accept a plea agreement provided that the judge complies with the obligations imposed by Rule 11(e), Fed. R. Crim. P. A judge" and inserting in lieu thereof "The court".

The Commentary to § 6B1.2 is amended in the second paragraph by deleting "will" and inserting in lieu thereof "should"; by deleting "the contemplated sentence is within the guidelines" and inserting in lieu thereof "such sentence is an appropriate sentence within the applicable guideline range"; and by deleting "recommended sentence or agreement" and inserting in lieu thereof "sentence".

The Commentary to § 6B1.2 is amended by inserting the following additional paragraphs at the end:

"A defendant who enters a plea of guilty in a timely manner will enhance the likelihood of his receiving a reduction in offense level under § 3E1.1 (Acceptance of Responsibility). Further reduction in offense level (or sentence) due to a plea agreement will tend to undermine the sentencing guidelines.

The second paragraph of subsection (a) provides that a plea agreement that includes the dismissal of a charge, or a plea agreement not to pursue a potential charge, shall not prevent the conduct underlying that charge from being considered under the provisions of § 1B1.3 (Relevant Conduct) in connection with the count(s) of which the defendant is convicted. This paragraph prevents a plea agreement from restricting consideration of conduct that is within the scope of § 1B1.3 (Relevant Conduct) in respect to the count(s) of which the defendant is convicted; it does not in any way expand or modify the scope of § 1B1.3 (Relevant Conduct).".

Reason for Amendment: This amendment clarifies that a plea agreement to dismiss a charge or not to pursue a potential charge does not insulate the conduct underlying such charge from the operation of § 1B1.3 (Relevant Conduct) in respect to the count(s) of which the defendant is convicted. The amendment also makes more explicit the Commission's policy that plea agreements should not undermine the sentencing guidelines.

[FR Doc. 92–10801 Filed 5–8–92; 8:45 am]

BILLING CODE 2210–40–M

federal register

Monday
May 11, 1992

Part III

Department of Education

Cooperative Demonstration Program (Correctional Education); Final Priorities, Required Activities, Selection Criteria, and Other Requirements for Fiscal Year 1992; Notice Inviting Applications for New Awards for Fiscal Year 1992

DEPARTMENT OF EDUCATION

Cooperative Demonstration Program (Correctional Education); Final Priorities, Required Activities, Selection Criteria, and Other Requirements for Fiscal Year 1992

AGENCY: Department of Education.

ACTION: Notice of Final Priorities, Required Activities, Selection Criteria, and Other Requirements for Fiscal Year 1992.

SUMMARY: The Secretary announces priorities for awards to be made in fiscal year (FY) 1992 using funds appropriated in FY 1991 under the Cooperative Demonstration Program, which is authorized by the Carl D. Perkins Vocational and Applied Technology Education Act, as amended (Perkins Act). Under the absolute priority, funds under this competition will be reserved for applications proposing to demonstrate model projects that would expand or improve access to quality vocational education programs for individuals in correctional education. In addition, the Secretary particularly invites those applications that, within the absolute priority of correctional institutions, incorporate the use of video and other technology to deliver educational training or services. The Secretary also imposes requirements related to the priorities and other matters, and will use new selection criteria in evaluating applications submitted for this competition only.

EFFECTIVE DATE: The provisions in this notice take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Gail M. Schwartz, U.S. Department of Education, 400 Maryland Avenue, SW., room 4529 Switzer Building, Washington, DC 20202–7242. Telephone: (202)–732–3892. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION:

The Cooperative Demonstration Program provides financial assistance for, among other things, model projects that provide improved access to quality vocational education programs for individuals who are members of special populations, including individuals in correctional institutions. This program activity is authorized by section 420A(a)(1) of the Perkins Act, as amended by the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Pub. L. 101–392, 104 Stat. 753 (1990)).

The Secretary wishes to highlight, for potential applicants, that this program can help further the purposes of AMERICA 2000, the President's education strategy to help America move itself toward the National Education Goals. Specifically, the program can contribute to the President's objective—as stated in Track III of the AMERICA 2000 strategy ("Transforming America into 'A Nation of Students' ")—of reviewing current Federal job training efforts and identifying successful ways of motivating and enabling individuals to receive the comprehensive services, education, and skills necessary to achieve economic independence. The correctional education priority also directly supports National Education Goal 5—ensuring that every adult American will be literate and possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The designation of correctional education as a priority under the Cooperative Demonstration Program is based on the critical need in this area, which is described in the Senate Committee Report accompanying the FY 1991 appropriations as follows:

> The Committee is concerned over the illiteracy problem pervading our Nation's adult and juvenile correctional facilities. Of the approximately 1 million persons incarcerated in prisons, jails, and juvenile correctional facilities, an estimated 80 percent lack a high school diploma and more than 75 percent are functionally illiterate. [S. Rep. No. 956, 101st Cong., 2d Sess. 265 (1990).]

The development and implementation of projects that provide "live work" experience for criminal offenders to help meet the needs of the institution and provide job skills and literacy training for offenders can facilitate their successful reentry into society and reduce the likelihood of their return to the criminal justice system. Upon release from correctional facilities, ex-offenders have limited opportunities for meaningful employment. Many youth and adults who return to the community lack necessary basic life skills, including the jobseeking and retention skills needed to obtain and maintain employment. Without basic literacy and job skills, it is unlikely that these persons will be effectively reintegrated into the community.

On November 13, 1991, the Secretary published a notice of proposed priorities, required activities, selection criteria, and other requirements for the Cooperative Demonstration Program (Correctional Education) in the **Federal Register** (56 FR 57774).

This notice of final priority does not solicit applications. A notice inviting applications concerning this absolute priority is published in a separate notice in this issue of the **Federal Register.**

Analysis of Comments and Changes

Absolute Priority

In response to the Secretary's invitation in the notice of proposed priority, eight commenters submitted letters supporting the correctional education priority. There were no comments opposing the priority. The supportive comments focused on the value of providing academic and vocational education in correctional institutions. The commenters indicated that the range of services described in the notice of proposed priority is needed to provide persons in correctional institutions a greater chance for success in society. In addition, the commenters emphasized that these services can be a means to reduce recidivism rates, provide for restitution in communities, and, ultimately, save tax dollars by decreasing incarceration time.

Comments: One commenter recommended that the term "live work" be expanded to include work that serves the needs of the correctional institution, the State, or private employers involved in correctional industries. The commenter stated that this expanded definition would reinforce the relationship of vocational education programs and correctional industries and allow for inmate participation in a free venture industry, where that opportunity is available.

Discussion: The Secretary recognizes correctional industries as valuable ways for offenders to obtain and apply vocational skills that facilitate transition to employment after incarceration.

Changes: The definition of "live work" has been expanded to include work that serves the needs of the correctional institution, the State, or private employers involved in correctional industries.

Comments: One commenter requested clarification of the term "private agency" and requested that the term be interpreted to include a public school working with a State agency.

Discussion: The term "private" as it applies to an agency, organization, or institution, is defined in 34 CFR 77.1(c) to mean that the agency, organization, or institution is not under Federal or public

supervision or control. Thus, a State agency and a public school are not private agencies because they are clearly under public control.

Changes: None.

Required Activities

Comments: Seven commenters offered recommendations regarding specific curriculum components, program structure, and staffing. The curriculum components that commenters felt should be specifically addressed include high school equivalency preparation, self-esteem, ethics, social skills, life skills, preventative programs, decision-making skills, prevocational and career assessment, and non-traditional vocational training for female offenders.

Commenters also specifically mentioned alternative schools and short-term detention as possible locations for the demonstration projects. One commenter recommended that a full-time case manager be assigned to all inmates enrolled in the demonstration program. The need for dissemination and training was also emphasized.

Discussion: The Secretary appreciates the commenters' suggestions. The specific components discussed by the commenters may be included, at an applicant's discretion. However, certain items proposed such as non-vocational, supportive services, or high school equivalency preparation would have to be part of the services to be provided by community agencies rather than part of the federally assisted or matching costs of the project. The priority purposely has been designed to allow an applicant flexibility and creativity to meet the needs that exist in its own institution. With respect to the possible locations for demonstration projects, an applicant can propose to locate a project at any jail, reformatory, work farm, detention center, halfway house, community-based rehabilitation center, or any similar institution designed for the confinement or rehabilitation of criminal offenders.

Changes: None.

Comments: One commenter suggested that an in-house evaluation of the grant activities be allowed. The commenter indicated that this would allow for more funding to be used for direct services. The notice proposed that each grant recipient be required to provide and budget for a third-party evaluation.

Discussion: The Secretary maintains that, with respect to demonstration projects, a third-party evaluation is necessary to gather reliable data on program effectiveness.

Changes: None.

Comment: One commenter expressed concern regarding the use of random assignment. The commenter was concerned about the fairness of denying program access to some eligible individuals in the institution. The notice requires that grantees use random assignment in designing an evaluation unless circumstances prevent it. In addition, under the proposed selection criteria, points would be awarded to applications that include a provision for evaluations based on a random assignment.

Discussion: Using random assignment in the design of a correctional education project evaluation presents no problems with fairness. In cases where there are more eligible potential participants for a program than there are openings or where there are a number of education programs available at a site, a random assignment procedure that assigns eligible students to a program or to a control group that receives different services or no services is appropriate and can yield valid and useful evaluation data. In cases where there is potentially room for everyone, or only one type of program is available, random assignment may not be appropriate. The priority notice does not require the use of random assignment—particularly if circumstances prevent the use of such a procedure.

Changes: None.

Other Requirements

Comments: Regarding the cost-sharing requirements, one commenter indicated that with limited resources it may be difficult to provide the required matching funds.

Discussion: Section 420A(b)(2) of the Perkins Act requires grantees under the Cooperative Demonstration Program to provide not less than 25 percent of the total cost of the project. However, section 420A(b) allows grantees under this program to satisfy the cost sharing requirement through cash or in-kind contributions, including facilities, overhead, personnel, and equipment fairly valued.

Changes: None.

Comments: Three commenters expressed concern regarding the stipulation that projects funded under this competition not expend Federal funds for equipment. The commenters indicated that the Secretary's invitational priority for applications that incorporate the use of video and other technology to deliver educational training or services appears to conflict with the prohibition against using Federal funds to purchase equipment.

Discussion: The Secretary does not believe that prohibiting the use of Federal funds to purchase or lease equipment is inconsistent with the invitational priority to incorporate video and other technology into the demonstration projects. Moreover, while the use of Federal funds is prohibited to purchase equipment, the matching funds may be used for this purpose.

The primary purpose of this competition is to enhance, expand, and demonstrate successful training programs. If Federal funds were to be used to purchase or lease equipment, the intended purpose of the projects would be diminished. This prohibition will help ensure that the funds available are used where they are most needed—to train students.

Projects funded under the Cooperative Demonstration Program must be capable of wide replication. If Federal funds are used to purchase or lease equipment, the possibilities for replication become somewhat limited. The Secretary, therefore, believes it is necessary to prohibit the use of Federal funds for equipment purchases or leases if project replication is to be more widely possible and if there is to be improved accountability for the use of Federal funds for the direct training of students.

Changes: None.

Comments: One commenter asked for clarification regarding the eligibility of institutions of higher education, particularly two-year technical and community colleges that have correctional education programs.

Discussion: As noted in section 420A of the Act, eligible applicants under the Cooperative Demonstration Program include State and local educational agencies, postsecondary educational institutions, institutions of higher education, and other public and private agencies, organizations, and institutions. Thus, two-year technical and community colleges are eligible to apply.

Changes: None.

Comments: One commenter stated that the notice of proposed priority did not indicate the number or amounts of available grants.

Discussion: This information is not published with the priority notice. It is, however, included in an application notice that is published in this issue of the **Federal Register**.

Changes: None.

Priorities

Absolute Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference for applications that meet the following priority:

The Secretary will fund under this competition only model demonstration projects that provide expanded or

improved access to quality vocational education for individuals in correctional institutions. These projects must enable offenders to provide "live work" to the institution, the State, or private employers involved in correctional industries, and to make a transition successfully from institutional environments to community settings. The projects must include life skills, job skills, and literacy training and must involve cooperation between private and public agencies.

Invitational Priority

Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1), an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Projects that incorporate the use of video and other technologies to deliver educational training or services. These technologies could be particularly appropriate to use in a variety of components of a correctional education program such as—

(a) Tutor training;

(b) Teacher inservice education; or

(c) Alternative degree programs that lead to a diploma or certificate of accomplishment.

Required Activities

The Secretary requires that any project funded under this competition—

(a) Expand or improve existing vocational education programs in correctional institutions;

(b) Use a curriculum that includes literacy and basic skills training, integrates academic content with vocational content, and provides for "live work";

(c) Use a combination of transitional services and activities that will assist criminal offenders to make the transition from institution to the community, including job placement assistance, career counseling, and in-house work experience that can be used after release from a correctional facility;

(d) Coordinate with community agencies that furnish transitional supportive services to criminal offenders after their release from correctional institutions, such as individual and family counseling, housing assistance, transportation, and social and cultural activities;

(e) Include a well-designed staff inservice education component to ensure the effective implementation of the program;

(f) Address the special learning needs of all offenders, including men, women, youth, and those who are disabled or elderly;

(g) Include evaluation as an integral part of the project that will produce the kind of data appropriate for the Department of Education's Program Effectiveness Panel; and

(h) Be of direct service to individuals enrolled in the project.

For the purpose of this program, the term "criminal offender" means any individual who is charged with or convicted of any criminal offense, including a youth offender or a juvenile offender. The term "correctional institution" means any jail, reformatory, work farm, detention center or halfway house, community-based rehabilitation center, or any other similar institution designed for the confinement or rehabilitation of criminal offenders. The term "live work" means work (1) that is performed by a criminal offender during incarceration in a correctional institution that provides the criminal offender with job skills, and (2) that serves the needs of the correctional institution, the State, or private employers involved in correctional industries. The term "Program Effectiveness Panel" means a panel of experts in the evaluation of education programs and in other areas of education, who are appointed by the Secretary, and who review and assign scores to programs according to the criteria in 34 CFR 786.12 or 787.12.

Criteria for Evaluating Applications

For the FY 1992 grant competition under the Cooperative Demonstration Program (Correctional Education) only, the Secretary uses the following selection criteria and assigns points to the selection criteria as indicated:

(a) *Program factors.* (15 points) The Secretary reviews the quality of the proposed project to assess the extent to which the proposed project will provide—

(1) Vocational and academic education to meet current and projected occupational needs;

(2) Post-release transitional services and follow-up assistance; and

(3) Staff in-service education.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant proposes—

(1) Project objectives that contribute to the improvement of education;

(2) To use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance; and

(3) To base the proposed project on successfully designed, established, and operated model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data that demonstrate impact from those programs in such factors as—

(i) Student performance and achievement;

(ii) GED completion; and

(iii) Post-release employment or enrollment in education or training programs or both.

(c) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (20 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) Provides for an assessment of the effectiveness of the program in improving student outcomes. The assessment should involve comparison of this program to other existing education and training programs or to no treatment for individuals, as appropriate;

(3) Is designed to produce findings that, if positive and significant, can be used in submission of an application to the Department's Program Effectiveness Panel. (Review criteria for the Program Effectiveness Panel are provided in 34 CFR 786.12);

(4) Provides for a random assignment evaluation design, unless circumstances prevent the use of this procedure;

(5) Provides for an assessment of the efficiency of the program's replication efforts, including dissemination activities and technical assistance provided to other projects; and

(6) Includes formative evaluation activities to help assess program management and improve program operations.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan;

(2) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project, including the third-party evaluator;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1) (i) and (ii) will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii), the Secretary considers—

(i) Experience and training in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities.

(h) *Adequacy of resources and commitment,* (5 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which the—

(i) Facilities that the applicant plans to use are adequate; and

(ii) Equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Use of non-Federal resources are adequate to provide project services and activities, especially resources of the public and private sectors; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance ends.

Other Requirements

Cost-sharing requirements

(a) A recipient of an award under this competition shall provide not less than 25 percent of the total cost (the sum of the Federal and non-Federal shares) of the project it conducts under this program.

(b) In accordance with subpart G of 34 CFR part 74 and 34 CFR 80.24, the non-Federal share may be in the form of cash or in-kind contributions, including the fair market value of facilities, overhead, personnel, and equipment.

(Authority: 20 U.S.C. 2420a(b)(2))

Purchase of Equipment

The projects funded under this competition may not expend Federal funds for equipment as defined in 34 CFR 74.132 and 80.3.

Dissemination

The projects funded under this competition must disseminate their results in a manner designed to improve the training of teachers, other instructional personnel, counselors, and administrators who are needed to carry out the purposes of the Act.

(Authority: 20 U.S.C. 2420a(d))

Evaluation requirements

(a) Each grant recipient shall provide and budget for a third-party evaluation of grant activities.

(b) The evaluation must include both a formative and summative evaluation of the program's operations. The summative evaluation must determine the effectiveness of the program in improving student outcomes while utilizing a random assignment design, unless circumstances prevent the use of this procedure.

(c) The evaluation must be based on student achievement, completion, and placement rates, and replication efforts, such as technical assistance provided to other projects and the dissemination of information and material about or resulting from the project.

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.

Program Authority: 20 U.S.C. 2420a

(Catalog of Federal Domestic Assistance Number 84.199D Cooperative Demonstration Program)

Dated: May 4, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-10891 Filed 5-8-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.199D]

Cooperative Demonstration Program (Correctional Education); Notice Inviting Applications for New Awards for Fiscal Year (FY) 1992

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice

contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The Cooperative Demonstration Program for Correctional Education provides financial assistance for the development of model projects that would expand or improve access to quality vocational education programs for individuals in correctional institutions.

This program can help further the purposes of AMERICA 2000, the President's education strategy to help America move itself toward the National Education Goals. Specifically, the program can contribute to the President's objective—as stated in Track III of the AMERICA 2000 strategy ("Transforming America into 'A Nation of Students' ")—of reviewing current Federal job training efforts and identifying successful ways of motivating and enabling individuals to receive the comprehensive services, education, and skills necessary to achieve economic independence. The correctional education priority also directly supports National Education Goal 5—ensuring that every adult American will be literate and possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: (1) State educational agencies; (2) local educational agencies; (3) postsecondary educational institutions; (4) institutions of higher education; and (5) other public and private agencies, organizations, and institutions.

Deadline for Transmittal of Applications: June 12, 1992.

Deadline for Intergovernmental Review: August 10, 1992.

Available Funds: $2,000,000.

Estimated Range of Awards: $100,000–$200,000.

Estimated Average Size of Awards: $200,000 per project year.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR Part 82 (New Restrictions on Lobbying).

(8) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR Part 86 (Drug-Free Schools and Campuses).

Priorities: The priorities in the Cooperative Demonstration Program (Correctional Education) notice of final priority for this program, as published elsewhere in this issue of the **Federal Register**, apply to this competition.

Selection Criteria

For the FY 1992 grant competition (for awards to be made in FY 1992 using FY 1991 funds) under the Cooperative Demonstration Program (Correctional Education), the Secretary uses the selection criteria in the notice of final priority, as published elsewhere in this issue of the **Federal Register**.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on April 2, 1992 (57 FR 11354).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.199D, U.S. Department of Education, room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and six copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.199D), Washington, DC 20202–4725; or

(2) Hand deliver the original and six copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.199D), Room #3633, Regional Office Building #3, 7th and D Streets, SW, Washington, DC 20202–4725.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt

Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708-9494.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Form

To apply for an award under this program competition, your application must be organized in the following order and include the following five parts:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)).

Part II: Budget Information.

Part III: Budget Narrative.

Part IV: Program Narrative.

Part V: Additional Assurances and Certifications:

a. Assurances—Non-Construction Programs (Standard Form 424B).

b. Certification regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80-0013) and Instructions.

c. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80-0014, 9/90) and Instructions. (NOTE: ED 80-0014 is intended for the use of grantees and should not be transmitted to the Department.)

d. Disclosure of Lobbying Activities (Standard Form LLL-A) (if applicable) and Instructions, and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL-A).

All forms and instructions are included as Appendix A of this notice. Questions and answers pertaining to this program are included, as Appendix B, to assist potential applicants.

All applicants must submit ONE original signed application, including ink signatures on all forms and assurances and TWO copies of the application. Please mark each application as original or copy. Local or State agencies may choose to submit two copies with the original.

No grant may be awarded unless a completed application form has been received. (20 U.S.C. 1241-1391)

FOR FURTHER INFORMATION CONTACT: Gail M. Schwartz, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4512—MES), Washington, DC 20202-7242. Telephone (202) 732-3892. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 2420a

Dated: May 4, 1992.

Betsy Brand,

Assistant Secretary, Office of Vocational and Adult Education.

BILLING CODE 4000-01-M

APPENDIX A

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name	Organizational Unit
Address (give city, county, state, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A State
B County
C Municipal
D Township
E Interstate
F Intermunicipal
G Special District
H Independent School Dist
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:
☒ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es) ☐ ☐
A Increase Award B. Decrease Award C Increase Duration
D Decrease Duration Other (specify)

9. NAME OF FEDERAL AGENCY:
U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 1 9 9D
TITLE: Cooperative Demonstration Program (Correctional Education)

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.)

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a Applicant	b Project

15. ESTIMATED FUNDING:

a Federal	$ .00
b Applicant	$ .00
c State	$ .00
d Local	$ .00
e Other	$ .00
f Program Income	$ .00
g TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a Typed Name of Authorized Representative	b Title	c Telephone number
d Signature of Authorized Representative		e Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	A	B	C
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Costs/Stipends			
11. TOTAL, Federal Funds Requested (lines 8 through 10)			

SECTION B - Cost Sharing Summary (if appropriate)

	A	B	C
1. Cash Contribution			
2. In-Kind Contribution (only costs specifically for this project)			
3. TOTAL, Cost Sharing (Rate %)			

NOTE: For FULLY-FUNDED PROJECTS use Column A to record the first 12-month budget period; Column B to record the remaining months of the project; and Column C to record the total.

For MULTI-YEAR PROJECTS use Column A to record the first 12-month budget period; Column B to record the second 12-month budget period; and Column C to record the third 12-month budget period.

SECTION C - Budget Estimates (Federal Funds Only) For Balance of Project

Budget Periods

Second	Third	Fourth	Fifth

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. Personnel: Show salaries to be paid to project personnel.

2. Fringe Benefits: Indicate the rate and amount of fringe benefits.

3. Travel: Indicate the amount requested for both inter- and intra-State travel of project staff. Include funds for at least one trip for two people to attend a project director's meeting in Washington, D.C.

4. Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year and a cost of $300 or more per unit ($5,000 or more if State, Local, or Tribal Government).

5. Supplies: Include the cost of consumable supplies and materials to be used during the project.

6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment; and (2) sub-contracts.

7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. Total, Direct Cost: Show the total for lines 1 through 7.

9. Indirect Costs: Indicate the rate and amount of indirect costs. NOTE: For training grants, the indirect cost rate cannot exceed 8%.

10. Training/Stipend Cost: (if allowable)

11. TOTAL, Federal Funds Requested: Show total for lines 8 through 10.

SECTION B - Cost Sharing Summary

Indicate the actual rate and amount of cost sharing when there is a cost sharing requirement. If cost sharing is required by program regulations, the local share required refers to a percentage of TOTAL PROJECT COST, not of Federal funds.

SECTION C - Budget Estimates (Federal Funds Only) for Balance of Project

If the project period exceeds 12 months, include cost estimates for the continuation budget periods, as appropriate. This SECTION does not apply to projects that are full-funded.

BILLING CODE 4000-01-C

Instructions for Part III—Budget Narrative

The budget narrative should explain, justify, and, if needed, clarify your budget summary. For each line item (personnel, fringe benefits, travel, etc.) in your budget, explain why it is there and how you computed the costs.

Please limit this section to no more than five pages. Be sure that each page of your application is numbered consecutively.

Instructions for Part IV—Program Narrative

The program narrative will comprise the largest portion of your application. This part is where you spell out the who, what, when, where, why, and how of your proposed project.

Although you will not have a form to fill out for your narrative, there is a format. This format is the selection criteria. Because your application will be reviewed and rated by a review panel on the basis of the selection criteria, your narrative should follow the order and format of the criteria.

Before preparing your application, you should carefully read the legislation and regulations of the program, eligibility requirements, information on any priority set by the Secretary, and the selection criteria for this competition.

Your program narrative should be clear, concise, and to the point. Begin the narrative with a one page abstract or summary of your proposed project. Then describe the project in detail, addressing each selection criterion in order.

The Secretary strongly requests you to limit the program narrative to no more than 30 double-spaced, typed pages (on one side only), although the Secretary will consider your application if it is longer. Be sure to number consecutively ALL pages in your application.

You may include supporting documentation as appendices. Be sure that this material is concise and pertinent to this program competition.

You are advised that:

(a) The Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels. (34 CFR 75.217)

(b) The technical review panel evaluates each application solely on the basis of the established technical review criteria. Letters of support contained in the application will strengthen the application only insofar as they contain commitments that pertain to the established technical review criteria, such as commitment and resources.

Additional Materials

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 90 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project, OMB 1830–0513, Washington, DC 20503. (Information collection approved under OMB control number 1830–0513. Expiration date: 6/30/92.)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insuranee purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form CCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0346-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*
Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:
CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*

b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Appendix B

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to all applications. Waivers for individual applications cannot be granted regardless of the circumstances.

Q. How many copies of the application should I submit and must they be bound?

A. Our new policy calls for an original and six copies to be submitted. The binding of applications is optional.

Q. We just missed the deadline for the XXX competition. May we submit under another competition?

A. Yes, however, the likelihood of success is not good. A properly prepared application must meet the requirements of the competition to which it is submitted.

Q. I'm not sure which competition is most appropriate for my project. What should I do?

A. We are happy to discuss any questions with you and provide clarification on the unique elements of the various competitions.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand that this previous contact is not required, nor will it in any way influence the success of an application.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 3 to 4 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. Once my application has been reviewed by the review panel, can you tell me the outcome?

A. No. Every year we are called by a number of applicants who have legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the review with anyone.

Q. Will my application be returned if I am not funded?

A. We no longer return unsuccessful applications. Thus, applicants should retain at least one copy of the application.

Q. Can I obtain copies of reviewers' comments?

A. Upon written request, reviewers' comments will be mailed to unsuccessful applicants.

Q. Is travel allowed under these projects?

A. Travel associated with carrying out the project is allowed. Because we may request the project director of funded projects to attend an annual project directors meeting, you may also wish to include a trip or two to Washington, DC in the travel budget. Travel to conferences is sometimes allowed when it is for purposes of dissemination.

Q. If my application receives high scores from the reviewers, does that mean that I will receive funding?

A. Not necessarily. It is often the case that the number of applications scored highly by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of all the applications and other relevant factors, determines the applications that can be funded.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during the panel and staff reviews that require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. How do I provide an assurance?

A. Except for SF–424B, "Assurances—Non-Construction Programs," simply state in writing that you are meeting a proscribed requirement.

Q. Where can copies of the **Federal Register**, program regulations, and Federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783–3238. When requesting copies of regulations or statutes, it is helpful to use the specific name, public law number, or part number. The material referenced in this notice should be referred to as follows:

(1) Carl D. Perkins Vocational and Applied Technology Education Act (Pub. Law 101–392, 104 Stat. 753 (1990)).

(2) Education Department General Administrative Regulations, 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

[FR Doc. 92–10892 Filed 5–8–92; 8:45 am]

BILLING CODE 4000–01–M

federal register

Monday
May 11, 1992

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary

24 CFR Part 963

Public Housing; Contracting With Resident-Owned Businesses; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 963

[Docket No. R-92-1545; FR-2856-F-01]

RIN 2577-AA86

Public Housing—Contracting With Resident-Owned Businesses

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends title 24 of the Code of Federal Regulations by adding a new part 963. Part 963 provides a public housing agency (PHA) with the option of utilizing an alternative procurement process when contracting with businesses owned in substantial part by public housing residents (resident-owned businesses) for public housing services, supplies, or construction. The alternative procurement process is based on the established procurement procedures and requirements set forth in the Department's regulations at 24 CFR 85.36, but limits solicitation to resident-owned businesses. The purpose of this rule is to enhance the economic opportunities available to public housing residents by facilitating the award of public housing contracts to resident-owned businesses that are capable of performing successfully under a proposed PHA contract, at a reasonable price.

EFFECTIVE DATE: June 10, 1992.

FOR FURTHER INFORMATION CONTACT: Paul Fletcher, Special Assistant for Economic Development, room 4112, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-5000, telephone (202) 708-4214. Hearing- or speech-impaired individuals may call the TDD number for the Office of Public and Indian Housing, (202) 708-0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in this final rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the Federal Register.

Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden was provided under the preamble heading, *Other Matters*, in the proposed rule published on September 25, 1991 at 56 FR 48454.

II. Background

Generally, contracts for services, supplies, or construction in connection with HUD-assisted housing are awarded in accordance with a competitive procurement process. To ensure fairness and economy in the procurement of these items under a HUD grant, the Department requires prospective grantees, including public housing agencies (PHAs), to follow the Department's procurement policies and procedures set forth in 24 CFR part 85, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 85.6.

The Department has a longstanding policy of encouraging PHAs to promote resident involvement in the development, operation, and management of public housing. (See generally 24 CFR part 964.) The objectives of this Department policy are: (1) To improve the quality of life for public housing residents; (2) to empower residents with job creation and asset development opportunities; and (3) to facilitate upward mobility. The Department's regulations currently provide for resident participation in the management duties and responsibilities of public housing developments. (See 24 CFR part 964.) The Department is committed to expanding resident involvement in public housing activities by encouraging PHAs to contract with businesses, owned in substantial part by public housing residents (resident-owned businesses), for public housing services, supplies, or construction.

PHAs have been responsive to the Department's policy on public housing resident involvement, and have awarded public housing contracts to eligible and qualified resident-owned businesses. To facilitate this contract award process, the Department proposed a new program directed toward this objective.

III. Proposed Alternative Procurement Process

On September 25, 1991 (56 FR 50815), the Department published for public comment a proposed rule that would amend the Department's regulations to create a new part 963. Part 963 would provide PHAs with the option of utilizing an alternative procurement process when contracting with businesses owned in substantial part by public housing residents (resident-owned businesses) for public housing services, supplies or construction. The alternative procurement process would be based on the established procurement procedures and requirements set forth in the Department's regulations at 24 CFR 85.36. However, solicitation under these procedures would be limited to resident-owned businesses.

In the September 25, 1991 proposed rule, a "resident-owned business" was defined as a business concern which is owned and controlled by public housing residents. "Owned and controlled" was defined to mean that the business is at least 51 percent owned by one or more public housing residents, and that the management and daily operations of the business are controlled by one or more of these individuals. The definition further provided that all securities which constitute ownership or control of a corporation for purposes of establishing the business as a resident-owned business shall be held directly by the public housing residents, and that no securities held in trust, or by any guardian for a minor, shall be considered as held by the public housing resident in determining the ownership or control of a corporation.

To be eligible to participate in the alternative procurement process the proposed rule provided for a business to meet the following requirements: the resident owner or owners of the business must reside in public housing over which the PHA, that is procuring the services, supplies or construction, has authority; the resident-owned business must disclose the names of all owners and management officials of the business; the resident-owned business must identify those owners and management officials who are not public-housing residents, and must disclose whether these individuals have a relationship with any business (resident or non-resident owned) engaged in a business activity similar to that with which the resident-owned business is engaged; the principal place of the business must be located within the project area of the PHA that is

proposing to procure public housing services, supplies, or construction; and the business must submit evidence sufficient to demonstrate that it has the ability to perform successfully under the terms and conditions of the proposed contract. The proposed rule also provided that a resident-owned business is not eligible to participate in the alternative procurement process if the resident-owned business has received under this process a maximum number of three contracts, or a maximum total contract dollar value of $500,000, whichever occurs first.

IV. Discussion of Public Comments

During the comment period, which ended November 25, 1991, the Department received 132 comments. The commenters included public housing authorities, residents of public housing, public housing resident management organizations, and several non-profit organizations interested in public housing activities. Although many commenters criticized, or suggested changes to one or more of the components of the alternative procurement process, all commenters were supportive of the program.

Following careful consideration of the issues raised by the commenters, the Department has decided to adopt the proposed rule with three principal changes.

First, the ownership disclosure requirements of the resident-owned business have been revised to include that the business must disclose the percentage of each owner's interest in the business.

Second, the Department is eliminating the requirement that the business must certify that its principal place of business is located within the project area of the PHA. In proposing this requirement, the Department did not intend that a resident-owned business must be located within the grounds of a public housing development, as believed by some commenters. By "area of the project," the Department meant the geographical area in which the PHA is authorized to engage in, or to assist in the development or operation of housing for low-income families. Nevertheless, the Department is removing this requirement because it believes this requirement infringes on the right of the owners to select a location they believe is the best location or most economical location for their business. As a result of removal of this requirement, the Department is also removing the definition of "project area".

Third, the Department is removing the "three contract award" limitation on participation. However, the Department is retaining the contract dollar amount limitation. The rule now provides that a resident-owned business is not eligible to participate in the alternative procurement process if the resident-owned business has received under this process one or more contracts with a total combined dollar value of $500,000.

In addition to the above three changes, the final rule, in § 963.12(c), includes reference not only to the bonding requirements of 24 CFR 85.36(h) (which was cited in the proposed rule), but also to the bonding requirements of § 968.240(d) and § 968.335(c)(1), which are applicable to public housing contracts awarded under the Comprehensive Improvement Assistance Program (CIAP) and the Comprehensive Grant Program, respectively.

The following presents a discussion of the substantive issues raised by the commenters and the Department's response to each issue. Only those sections of the rule on which comments were received are discussed below.

Statutory Authority for Rule

Comment. One commenter stated that it was concerned by HUD's decision to issue the rule "based solely" on the provisions of section 3 of the Housing and Urban Development Act of 1968.

Response. The statutory authority for this rule is not section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u). The "authority" section for the rule lists section 2 of the United States Housing Act of 1937 and section 7(d) of the Department of Housing and Urban Development Act as the statutory authority for the rule. (See 56 FR 48456.) The preamble to the proposed rule stated that the alternative procurement process is consistent with the purposes of section 3, not that it was authorized by section 3. (See 56 FR 48454.)

Purpose (§ 963.1)

Section 963.1 of the proposed rule and of this final rule provides that the purpose of part 963 is to enhance the economic opportunities of public housing residents by providing PHAs with a method of soliciting and contracting with eligible and qualified resident-owned businesses for public housing services, supplies or construction. Section 963.1 further provides that the contract award method provided by part 963 is not a requirement, and is available to PHAs subject to the conditions set forth in this part, and subject to permissibility under State or local laws.

Comment. One commenter stated that the rule did not make any reference to State statutes governing competitive bidding, and suggested that the rule include explicit language regarding the primacy of State competitive bidding laws, if these laws impose more stringent requirements than 24 CFR part 85.

Response. Section 963.1 of the rule states that the alternative procurement method is available to public housing agencies subject to the conditions set forth in this part, and "*subject to permissibility under State and local laws.*" (Emphasis added.) Accordingly, if the procurement laws of a particular State or local jurisdiction to which a PHA is subject would not permit the type of procurement process provided by the alternative procurement method of part 963 (a process which provides for initial solicitation to be limited to resident-owned businesses), then the PHA may not utilize this method. With respect to the issue of the primacy of State procurement laws, HUD's regulations at 24 CFR part 85 govern procurement under Federal funds. Section 85.36(a) of these regulations require grantees and subgrantees of Federal funds (other than States) to comply with paragraphs (b) through (i) of § 85.36. (States are to follow the same policies and procedures that they use for procurements from non-Federal funds.) Section 85.36(b), entitled "Procurement Standards," provides that: "Grantees and subgrantees will use their own procurement procedures *which reflect applicable State and local laws and regulations*, provided that the procurements conform to applicable Federal law and the standards identified in this section." (Emphasis added.)

Comment. One commenter requested that the final rule preempt State and local laws which may preclude the availability of this program to PHAs.

Response. The Department has no statutory authority to take such action.

Comment. One commenter requested that the final rule require PHAs to use the alternative procurement process when securing services, supplies or construction in connection with properties for which PHAs are using Comprehensive Grant or Comprehensive Improvement Assistance Program (CIAP) funds.

Response. There is no statutory basis for requiring PHAs to utilize the alternative procurement process under these circumstances.

Comment. One commenter stated that it is essential that the final rule clearly state that PHAs are not required to contract with resident-owned businesses.

Response. Section 963.1 of the proposed rule and of this final rule

explicitly states: "The contract award method provided by this part is not a requirement. It is an alternative procurement method available to public housing agencies, subject to the conditions set forth in this part, and subject to permissibility under State and local laws." Additionally, the preamble to the proposed rule stated in several places that the alternative procurement method is an optional program. (See 56 FR 48453, 48454.) The Department believes that there is no ambiguity that this is a voluntary program, not a mandatory program.

Comment. One commenter stated that rather than create a new procurement procedure solely for resident-owned businesses, HUD should consider establishing "resident bidding preference" within existing procurement policies.

Response. There is no statutory authority for including public housing resident bidding preference within the existing procurement regulations. The Department notes, however, that section 3 of the Housing and Urban Development Act of 1968 establishes employment and contract preferences for residents and businesses of an area of a section 3 covered project.

Applicability (§ 963.3)

Section 963.3 of the proposed rule and of this final rule provides that the policies and procedures contained in part 963 apply to public housing developments that are owned by PHAs and that are covered by ACCs with HUD.

Comment. One Commenter objected to the exclusion of Indian housing authorities (IHAs) from the program. The commenter stated that the Indian preference regulations are not limited to local Indian-owned businesses but extend to any Indian-owned firm, regardless of the location of the firm. The commenter requested that the final rule include IHAs in order to support the resident initiative efforts in local Native American communities.

Response. The Department is considering including a similar program in HUD's Indian housing regulations. This matter will be the subject of future rulemaking.

Comment. One commenter stated that the program should be available to all residents of HUD assisted properties.

Response. The alternative procurement process is targeted to public housing residents because the public housing program offers the best environment to introduce and test the effectiveness of this type of program. Because PHAs own, develop, rehabilitate and operate public housing, a significant number of employment and contract opportunities arise from these activities, activities which are supported by Federal financial assistance. Additionally, PHAs are very supportive of resident initiatives that are directed to improving the living conditions of public housing, and assisting residents to become self-sufficient. This program promotes these objectives. Although this program is limited to public housing, dependent upon its success, the Department may consider expansion of this program to other HUD assisted properties, where feasible. The Department notes, however, that all programs receiving direct financial assistance from HUD are subject to the requirements of section 3 of the Housing and Urban Development Act of 1968. Section 3 requires recipients of HUD assistance, both public and private, to utilize, to the greatest extent feasible, residents of the section 3 covered project area as trainees and employees, and businesses of the section 3 covered project area as contractors, and subcontractors. Accordingly, employment and contract award opportunities are available to other HUD-assisted housing residents through section 3.

Definitions (§ 963.5)

This section defines the major terms used in part 963.

Comment. Two commenters stated that the final rule should provide for ownership of the resident-owned business to be greater than 51 percent. One commenter recommended lowering the percentage of ownership to less than 51 percent. Another commenter stated that "ownership" should not be the sole basis for defining resident-owned business; the criteria also should include "day-to-day" management.

Response. A 51 percent ownership requirement is the standard criteria for determining majority ownership of a business. The Department's regulations implementing section 3 of the Housing and Urban Development Act of 1968, codified at 24 CFR part 135, use 51 percent to determine whether a business is owned in substantial part by persons residing in the section 3 covered project area. (See 24 CFR 135.5.) The Small Business Administration also establishes a 51 percent ownership requirement for its minority small business program. (See 13 CFR 124.103.)

With respect to the comment that the ownership requirement should not be based solely on "ownership" but also should include "day-to-day" management, the Department points out that the definition of "resident-owned business" as set forth in the September 25, 1991 proposed rule and this final rule, includes the concept of day-to-day management. The definition provides that the management and daily operations of the business must be controlled by one or more of the public housing resident owners.

Eligible Resident-Owned Businesses (§ 963.10)

Section 963.10 of the proposed rule and this final rule sets forth the requirements that a resident-owned business must meet to be eligible to participate in the alternative procurement process. The eligibility requirements in the proposed rule included certain disclosures by owners concerning their ownership interest in the business. The Department specifically requested comment on these requirements. All commenters who responded to this request for comment were supportive of these disclosure requirements. Other comments on the eligibility requirements are as follows:

Comment. One commenter stated that the "legally formed business" requirement may have a "chilling effect" on small start-up companies. The commenter also asked whether residents could undertake work on a contract without the need for a structured business entity.

Response. The program provided by new part 963 is a "business" opportunity program. Whether a group of residents could undertake a contract without the need for a structured business entity may depend upon the nature of the contract to be awarded. The Department notes, however, that if one or more individuals identify themselves as a business entity (i.e., a corporation, partnership, or sole proprietorship), then this entity must be organized in accordance with applicable State or local law.

Comment. One commenter requested that the final rule provide that the resident-owned business disclose the percent of the business owned by each resident and/or principal owner.

Response. The Department agrees with the commenter that this disclosure is appropriate to determine whether a resident owned business is eligible to participate in the program, and has included this requirement in the final rule.

Comment. One commenter recommended that the final rule provide that the resident-owners of the business must have resided in public housing for a minimum of one year.

Response. The Department believes that if a public housing resident is motivated to start a business, this effort

should be supported regardless of the length of time the individual has resided in public housing.

Comment. Several commenters interpreted the "business location" requirement of the proposed rule to mean that the business must be located within the premises of the housing development. Other commenters did not misinterpret the requirement, but nevertheless found it too restrictive.

Response. As discussed earlier in this preamble, the Department agrees with the commenters that this requirement unduly interferes with the right of the owners of the business to select the location of the business. Accordingly, the requirement that the business be located within the premises of the housing development has been removed from the final rule. As stated in § 963.1, the final rule follows the procurement procedures set forth in 24 CFR 85.36.

Comment. One commenter stated that the final rule provide that to be eligible to participate in the program, the business must employ only public housing residents. Another commenter stated the final rule should require the business to show at least a good faith effort to employ public housing residents.

Response. The Department hopes that one of the outcomes of this program will be increased employment of public housing residents, but the Department does not want to dictate to the businesses who their employees should be.

Comment. Many of the commenters criticized the eligibility requirement in the proposed rule which limited participation in the program to a maximum number of three contracts or a total contract dollar value of $500,000. Several of these commenters stated that there should be no limitation on participation. Some commenters suggested that the limitation be one only of time, such as five years. Other commenters suggested that the only limitation be one of a dollar amount, and requested an amount higher than $500,000. One commenter requested that participation in the program be limited to the period in which the resident-owned business remains a "small business" as defined by the Small Business Administration. Another commenter suggested that any limitation on participation should be a decision of the PHA. Another commenter simply requested that the final rule clarify whether the limitation on participation is an annual limitation, or a lifetime limitation.

In proposing a limitation on participation in the program, the Department stated that it wanted to avoid the possibility that a resident-owned business will become dependent on income provided by public housing contracts. The rationale for inclusion of the limitation on participation was roundly criticized by several of the commenters.

Response. The Department gave careful consideration to all suggested changes to the limitation on participation requirement, including the suggestion that there be no limitation on participation in the program. As discussed earlier in this preamble, the Department has decided to retain the limitation on participation, but has revised the limitation to be one only of a dollar amount. The final rule provides that a resident-owned business is not eligible to participate in the alternative procurement process if the resident-owned business has received under this process a total contract dollar value of $500,000. This limitation is a "lifetime" limitation, not an annual limitation.

Accordingly, under this final rule, a resident-owned business may be awarded 20 contracts at $25,000 before it becomes ineligible to participate in the alternative procurement process. If a resident-owned business is awarded one $450,000 contract, the business would not be eligible to submit a bid on a contract for which the expected contract cost would exceed $50,000.

The Department continues to believe that the limitation on participation is necessary to avoid a business's possible dependency on income provided by public housing contracts that are obtained through a special contract award process. The Department also believes that this limitation is necessary to promote the award of contracts to a greater number of resident-owned businesses. The Department points out, however, that, at any time, a resident-owned business may pursue public housing contracts under the Department's regular procurement procedures. The ineligibility of a resident-owned business to participate in the alternative procurement process does not preclude their ineligibility to seek contracts through HUD's regular procurement process.

Comment. The final rule should address the situation of a resident-owned business that has reached the criteria governing limitation on participation, and reorganizes and reapplies as a new firm.

Response. The Department believes that the ownership disclosure requirements imposed on a resident-owned business will alert the PHA of any attempt by a resident-owned businesses to circumvent the limitation on participation in the program. The Department is reluctant to include in the final rule any restrictions on business reorganization because there are a variety of reasons why a business may dissolve and reorganize as a new firm which would have nothing to do with the limitation on participation. However, in the event that participating PHAs report attempts by resident-owned business to circumvent the limitation on participation through business reorganization or other methods, the Department may revisit this issue.

Comment. One commenter requested guidance on the situation in which the resident owner leaves public housing before work on a contract is completed.

Response. Once the contract is awarded, the business would be responsible for completing the contract, regardless of whether the majority owner or owners remain public housing residents. However, once the majority owners leave public housing, then the business is no longer a "resident-owned" business, and is no longer eligible to participate in the alternative procurement process.

Alternative Procurement Process (§ 963.12)

Section 963.12 sets forth the requirements and procedures that the PHA must follow in using the alternative procurement process.

Comment. One commenter stated that bonding requirements have traditionally been a stumbling block for many small companies, and that it would prove to be the case for resident-owned businesses under this program. The commenter requested that resident-owned businesses be exempt from this requirement. Another commenter requested that the final rule permit the PHA to decide whether a bond is required for the contract.

Response. The Department believes that it is important that resident-owned businesses meet all requirements that other businesses are required to meet under the Department's procurement regulations. Section 85.36(h) imposes a bonding requirement on construction or facility improvement contracts or subcontracts *exceeding* $100,000, and the section permits flexibility for assuring that the awarding agency's interest is adequately protected. The Department also notes that the Small Business Administration and the Department of Transportation have programs which assist new businesses in meeting their bonding requirements.

Comment. Two commenters requested that the final rule provide that a certain percentage of public housing contracts

be set aside for award to resident-owned businesses.

Response. The Department has repeatedly stated that utilization of the alternative procurement process by PHAs is voluntary. To require that a certain number of contracts be awarded to resident-owned businesses under this process would make the program mandatory. Accordingly, the Department declines to adopt the commenters' proposal.

Comment. One commenter stated that, at least initially, a PHA may find only one resident-owned business eligible and qualified to undertake work on a particular contract, and that the final rule should address a single source procurement situation.

Response. The Department's procurement regulations address a single source procurement situation at 24 CFR 85.36(d)(4).

Suggestions for Additional Rule Provisions

Comment. Several commenters offered suggestions on additional program features which they believed should be included in the final rule. One commenter requested that the resident-owned business be required to complete a two year business program before being found eligible to participate in the program. Two commenters suggested that the alternative procurement program provide funding to residents for business training. Two commenters also suggested that the program provide funding for business start-up costs. Three commenters stated that the final fule should permit PHAs to make loans to resident-owned business to help with business start-up costs. One commenter requested that final rule permit PHAs to relax or waive occupancy restrictions so that residents could use their dwelling units for their new businesses, if necessary. Another commenter requested that the final rule permit PHAs to waive increases in rent for residents whose income is increased as a result of ownership in a resident-owned business. Another commenter made a similar comment and stated that a resident's income received through ownership in a resident-owned business should be treated separately from resident income to allow for capital development.

Response. The Department has carefully considered the commenters' suggestions, but declines to adopt any of their proposals at this time. The alternative procurement process is not intended to be a program that addresses *all* employment needs of public housing residents. The alternative procurement process is directed solely to facilitating the award of public housing contracts to resident-owned businesses. The Department believes that this process will increase employment opportunities for public housing residents and thus, encourage existing resident-owned businesses to pursue public housing contract work, and encourage residents with marketable business or labor skills to organize as a business and seek public housing contract work. Other HUD programs and other Federal programs are directed to providing funds for technical training and business organization. The Department believes that the alternative procurement process will complement these other programs.

V. Other Matters

Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule permits public housing agencies, when contracting with resident-owned businesses for public housing services and supplies, to award contracts to resident-owned businesses under the alternative procurement process established by this rule. The alternative procurement process is an option, not a requirement, available to public housing agencies, subject to the conditions set forth in the rule, and subject to permissibility under State and local law. The scope of the rule is limited to public housing agencies, and to public housing contracts of $500,000 or less. The rule also limits the frequency with which any one resident-owned business may participate in the alternative procurement process. Because of the limitations imposed on this process, the Department believes that the rule will not alter significantly the PHA contract award process, as currently exists. The Department believes that the majority of PHA contracts will continue to be awarded to non-resident-owned businesses. While the rule may result in some positive economic impact on resident-owned businesses, which in all likelihood will be small businesses, the modest nature of the rule's goals would not result in a significant economic impact on small entities.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50, that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332), in connection with the proposed rule. The Finding of No Significant Impact remains applicable to this final rule, and is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Executive Order 12611, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611, Federalism, has determined that this rule would not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government. The rule would provide PHAs with an alternative procurement process when contracting with resident-owned businesses for public housing services, supplies or construction. Accordingly, the rule provides PHAs with increased flexibility in the administration of HUD grants for public housing developments. Additionally, the rule also provides that the availability of this alternative procurement process to PHAs is subject to State and local procurement laws.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have a potential for significant impact on family formation, maintenance, and general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was listed as sequence number 1249 in the Department's Semiannual Agenda of Regulations published on April 27, 1992 (57 FR 16804, 16845), under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 963

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, title 24 of the Code of Federal Regulations is amended to add a new part 963 to read as follows:

PART 963—PUBLIC HOUSING—CONTRACTING WITH RESIDENT-OWNED BUSINESSES

Subpart A—General

Subpart B—Contracting with Resident-Owned Businesses

Authority: 42 U.S.C. 1437; 42 U.S.C. 3535(d)).

Subpart A—General

§ 963.1 Purpose.

The purpose of this part is to enhance the economic opportunities of public housing residents by providing public housing agencies with a method of soliciting and contracting with eligible and qualifed resident-owned businesses (as defined in this part) for public housing services, supplies, or construction. The contract award method provided by this part is based on the established procurement procedures set forth in 24 CFR 85.36, with solicitation as provided by these procedures limited to resident-owned businesses. The contract award method provided by this part is not a requirement. It is an alternative procurement method available to public housing agencies, subject to the conditions set forth in this part, and subject to permissibility under State and local laws.

§ 963.3 Applicability

The policies and procedures contained in this part apply to public housing developments that are owned by public housing agencies (PHAs) and that are covered by Annual Contributions Contracts (ACC) with the Department. Public housing contracts eligible to be awarded under the alternative procurement process provided by this part are limited to individual contracts that do not exceed $500,000. Resident-owned businesses eligible to participate in the alternative procurement process are limited to those that meet the eligibility requirements of § 963.10. The policies and procedures contained in this part are consistent with the objectives of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and similar Federal requirements imposed on public housing programs. (See 24 CFR 941.208(a) and 24 CFR 968.110(a).)

§ 963.5 Definitions.

Act. The U.S. Housing Act of 1937 (42 U.S.C. 1437).

Alternative procurement process. The alternative method of public housing contract award available to public housing agencies and eligible resident-owned businesses under the conditions set forth in this part.

Annual Contributions Contract (ACC). See definition in 24 CFR 968.105.

Certification. A written assertion based on supporting evidence, which shall be kept available for inspection by the Secretary, the Inspector General, and the public, which assertion shall be deemed to be accurate for purposes of this part, unless the Secretary determines otherwise after inspecting the evidence and providing due notice and opportunity for comment.

Contract or *public housing contract.* Any contract awarded by a PHA for services, supplies, or construction necessary for the development, operation, modernization, or maintenance of public housing.

HUD. The Department of Housing and Urban Development, including the Regional and Field Offices that have been delegated authority to perform functions pertaining to this part for the area in which the PHA is located.

Management officials. The individuals who possess the power to make the day-to-day, as well as major, decisions on matters of management, policy, and operations of the resident-owned business.

Principal. An owner, partner, director, or management official of the resident-owned business with the power and authority to represent the business and to execute contract, leases, agreements, and other documents on behalf of the business.

Public housing or *public housing development.* Any public housing development which is owned by a Public Housing Agency (PHA) and is receiving funds under an Annual Contribution Contract (ACC).

Public housing agency (PHA). Any State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) that is authorized to engage in or assist in the development or operation of public housing. For the purposes of this part, the term Public Housing Agency does not include Indian Housing Authorities.

Public housing resident. Any individual who resides in public housing as a signatory on a public housing lease, or as a member of the family of the individual(s) who is the signatory on the public housing lease.

Resident-owned business. Any business concern which is owned and controlled by public housing residents. (The term "resident-owned business" includes sole proprietorships.) For purposes of this part, "owned and controlled" means a business:

(1) Which is at least 51 percent owned by one or more public housing residents; and

(2) Whose management and daily business operations are controlled by one or more such individuals.

All securities which constitute ownership or control of a corporation for purposes of establishing the business as a resident-owned business shall be held directly by the public housing residents. No securities held in trust, or by any guardian for a minor, shall be considered as held by the public housing resident in determining the ownership or control of a corporation.

Subpart B—Contracting With Resident-Owned Businesses

§ 963.10 Eligible resident-owned businesses.

To be eligible for the alternative procurement process provided by this part, a business must meet the following requirements, and must submit evidence to the PHA, in the form described below, or as the PHA may require, that shows how each requirement has been met.

(a) *Legally formed business.* The business shall submit certified copies of any State, county, or municipal licenses that may be required of the business to engage in the type of business activity for which it was formed. Where applicable (as for example, in the case of corporations), the business also shall submit a certified copy of its corporate charter or other organizational document that verifies that the business was properly formed in accordance with State law.

(b) *Resident-owned business.* The business shall submit a certification that it is a resident-owned business as defined by this part. The business shall disclose to the PHA all owners of the business, and each owner's percentage

of ownership interest in the business. The business also shall disclose all individuals who possess the power to make the day-to-day, as well as major, decisions on matters of management, policy, and operations (management officials). The business shall identify all owners and management officials who are not public housing residents, and shall disclose any relationship that these owners and officials may have to a business (resident- or non-resident-owned) engaged in the type of business activity with which the resident-owned business is engaged. For purposes of this part, "relationship" means employment by, or having an ownership interest in, a business. The business also shall submit such evidence as the PHA may require to verify that the owner or owners identified as public housing residents reside within public housing of the PHA.

(c) *Responsibility to complete contract.* The business shall submit evidence sufficient to demonstrate to the satisfaction of the PHA that the business has the ability to perform successfully under the terms and conditions of the proposed contract. Consideration will be given to various factors, including but not limited to those identified in 24 CFR 85.36(b)(8) and also to such matters as proof of completion of courses in business administration or financial management, and proof of job training or apprenticeship in the particular trade, business, profession, or occupation.

(d) *Limitation on alternative procurement contract awards.* The business shall submit a certification as to the number of contracts awarded, and the dollar amount of each contract award received, under the alternative procurement process provided by this part. A resident-owned business is not eligible to participate in the alternative procurement process provided by this part if the resident-owned business has received under this process one or more contracts with a total combined dollar value of $500,000.

§ 963.12 Alternative procurement process.

(a) *Method of procurement.* In contracting with resident-owned businesses, the PHA shall follow the applicable method of procurement as set forth in 24 CFR 85.36(d), with solicitation limited to resident-owned businesses. Additionally, the PHA shall ensure that the method of procurement conforms to the procurement standards set forth in 24 CFR 85.36(b).

(b) *Contract awards.* Contracts awarded under this part shall be made only to resident-owned businesses that meet the requirements of § 963.10, and that comply with such other requirements as may be required of a contractor under the particular procurement and the Department's regulations. An award shall not be made to the resident-owned business if the contract award exceeds the independent cost estimate required by 24 CFR 85.36(f), and the price normally paid for comparable supplies, services, or construction in the project area.

(c) *Contract requirements.* Any contract entered into between a PHA and a resident-owned business under this part shall comply with: the contract provisions of 24 CFR 85.36(i); the provisions of 24 CFR 85.36(h), 24 CFR 968.240(d) or 24 CFR 968.335(c)(1) governing bonding requirements, where applicable; and such other contract terms that may be applicable to the particular procurement under the Department's regulations. In addition to the recordkeeping requirements imposed by 24 CFR 85.36(i), the PHA also shall maintain records sufficient to detail the significant history of the procurement made under this part. These records will include, but are not necessarily limited to the following: The independent cost estimate and comparable price analysis as required by paragraph (b) of this section; the basis for contractor selection, including documentation concerning the eligibility of the selected resident-owned business under § 963.10; and the basis for determining the reasonableness of the proposed contract price.

Dated: May 1, 1992.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 92-10930 Filed 5-8-92; 8:45 am]

BILLING CODE 4210-33-M

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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CFR CHECKLIST

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3 (1990 Compilation and Parts 100 and 101)	(869–013–00002–1)	14.00	[1] Jan. 1, 1991
4	(869–017–00003–5)	16.00	Jan. 1, 1992
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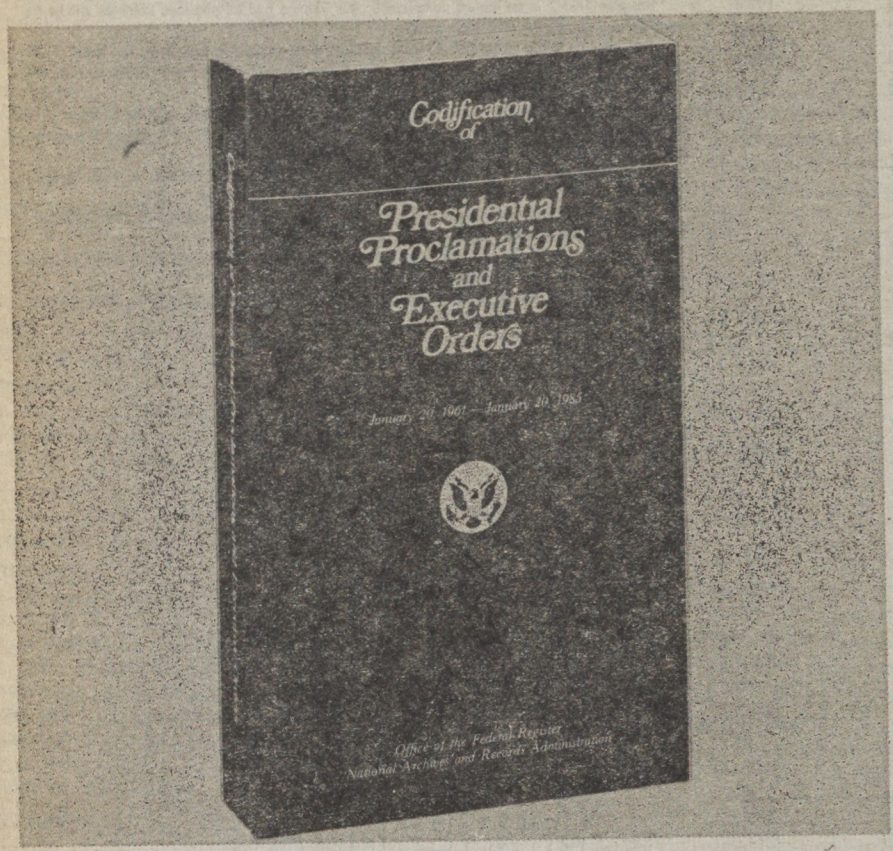

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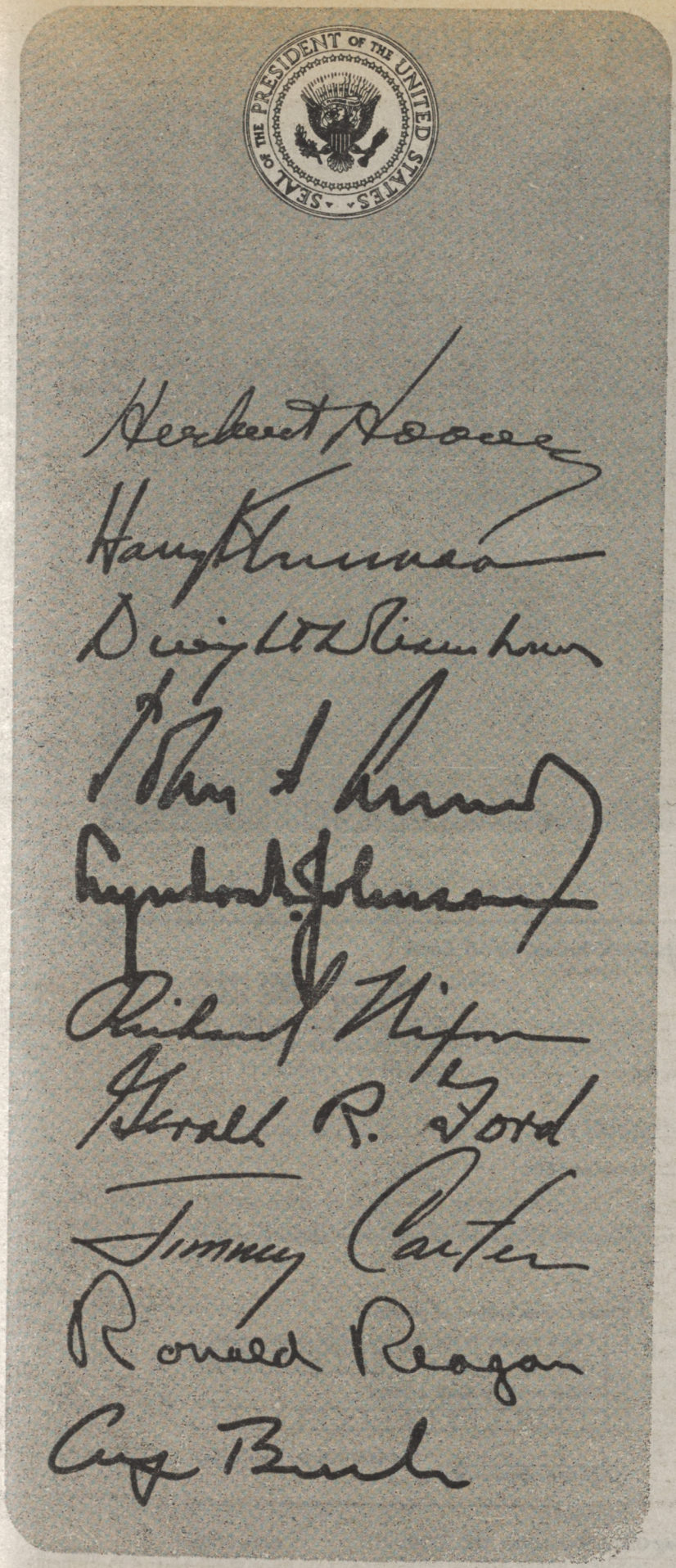

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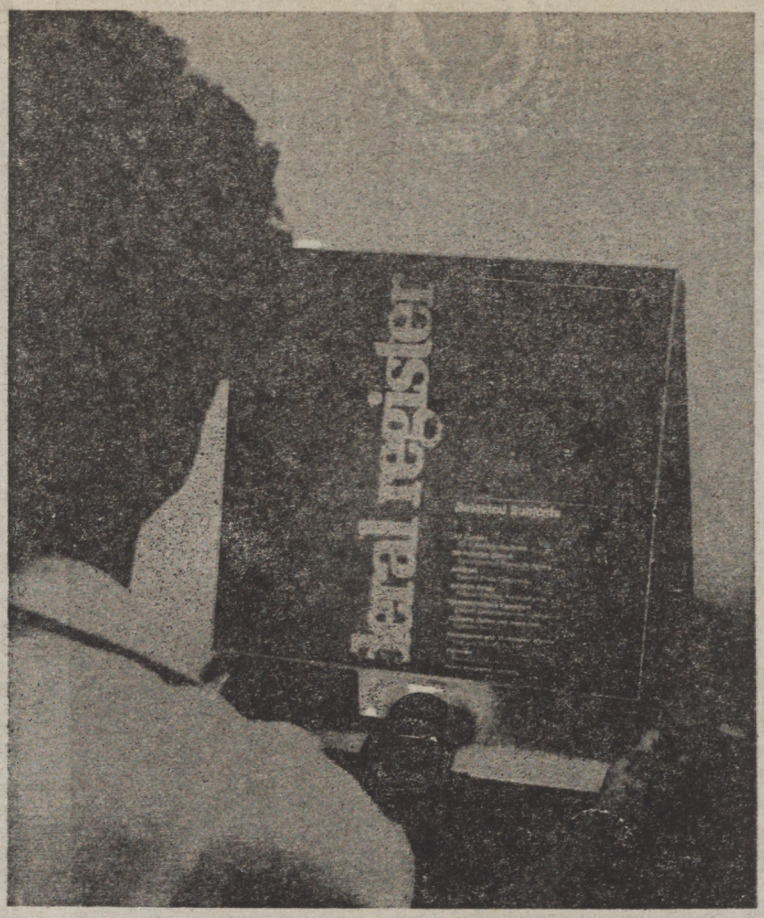

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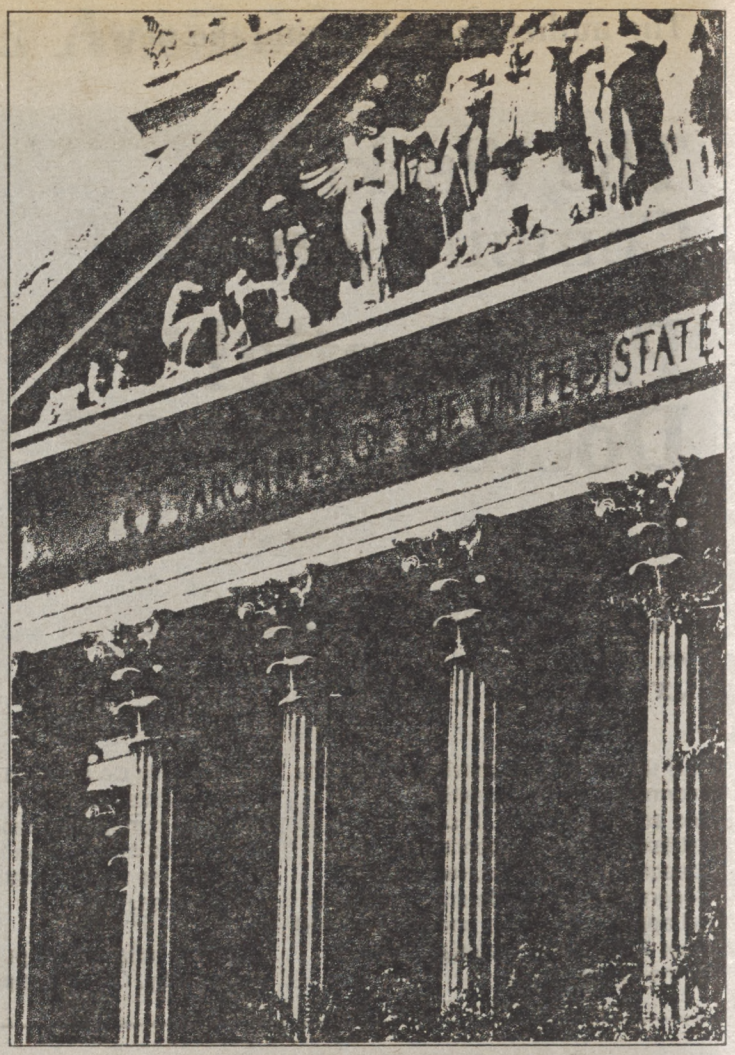

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